Ordinance No. 3574
(Amending or Repealing Ordinances)

CFN=131 – Zoning Code and Amendments
Passed – 9/18/01
Permit Process
Amending Portions of Sec. 2.32; Section 11.03.520; Chapter 12.01;
Section 14.01.020; Chapter 14.11

Amends Ords. 2233;2302;2494;2802;3149;3169;3320;3424;
3415

Amended by Ord. 3600 (Sec. 12.01.190(H))
Amended by Ord. 3614 (Sec. 12.01.040)
Amended by Ord. 3690 (Sec. 14.01.020)
Amended by Ord. 3760 (Sec. 12.01.030)
Amended by Ord. 3801 (Sec. 12.01.020;12.01.040;12.01.145;12.01.195)
Amended by Ord. 3839 (Ch. 14.01)
Amended by Ord. 3914 (Secs. 12.01.110;14.01.030;14.01.040)
Amended by Ord. 3956 (Sec. 14.01.030)
Amended by Ord. 4011 (Sec. 12.01.040(A))
Amended by Ord. 4044 (Chp. 12.01)

The date ["Beginning July 1, 1998"] has led to confusion  This date will be deleted from cover sheets of ordinance/resolution revision pages  This cover sheet will be deleted on electronic pages only, no other deletions or changes have been made to the document – 6/21/2012
ORDINANCE NO. 3574

AN ORDINANCE of the City Council of the City of Kent, Washington, updating code provisions relating to the administration of development regulations by amending Chapter 12.01 of the Kent City Code, and related portions of Chapters 2.32, 11.03, 14.01, and 14.11.

WHEREAS, in 1998 the City Council enacted Chapter 12.01 of the Kent City Code to provide provisions for establishing 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 (KCC): Chapter 2.32 KCC, Office of Hearing Examiner; Chapter 11.03 KCC, Environmental Policy; and Chapter 12.04 KCC, Subdivisions; and

WHEREAS, the City Council desires to update these processes and related matters to provide for more effective and efficient processing of land use and development proposals; NOW THEREFORE,

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

Permit Processing
SECTION 1. Section 2.32 of the Kent City Code, entitled, "Office of the Hearing Examiner," is hereby amended to read as follows:

Sec. 2.32.150. Appeal of decision.
A. Any party who feels aggrieved by the hearing examiner's decision may submit an appeal, if authorized by statute or Kent City Code, in writing to the city council within twenty-one fourteen (21+4) calendar days from the date the final decision of the hearing examiner is rendered, requesting a review of such decision unless such appeal to the city council is precluded by ordinance and/or unless an ordinance provides that appeals be made directly to the superior court or to another designated forum.
B. The appeal shall be upon the record established made at the hearing held by the hearing examiner, provided, that new evidence which was not available at the time of the hearing held by the hearing examiner may be included in such appeal. The term "new evidence" shall mean only evidence discovered after the hearing held by the hearing examiner and shall not include evidence which was available or which could reasonably have been available and was simply not presented at the hearing for whatever reason.
C. The written appeal shall allege specific errors of fact, specific procedural errors, omissions from the record, errors in the interpretation of the comprehensive plan or new evidence which was not available at the time of the hearing held by the hearing examiner.
D. Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a hearing shall be held by the city council. Such hearing shall be held in accordance with appeal procedures adopted by city council by resolution.
B. No appeal may be made from a recommendation of the hearing examiner.

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 from the hearing examiner's recommendation.

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. Appellants have, unless within twenty-one (21) calendar days from the date of city council action, to file an appeal filed with the superior court.

Sec. 2.32.170. City administrative staff are to be considered a person or party. For the purpose of KCC 2.32.140 and 2.32.150, the city's administrative staff shall be considered a "person" and/or "party" and shall have the same rights as any other person or party to make requests for reconsideration to the hearing examiner or to appeal decisions of the hearing examiner to the city council, superior court or to another designated forum.

SECTION 2. Section 11.03.520 of the Kent City Code, entitled "Appeals," is hereby amended to read as follows:

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

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

 Permit Processing
(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 (a)(3) of this subsection, the appeal shall be consolidated with any hearing or appeal of the underlying permit.

(2) A determination of significance: The 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. Except for permits and variances issued pursuant to the city shoreline master program, Resolution 907, There shall be no administrative appeal when any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of State Environmental Policy Act by a nonelected official, the decision shall be appealable to the hearing examiner. Such appeal shall be
pursuant to Ch. 2.32 KCC and Ch. 12.01 KCC. Appeals to the city council from the
land use hearing examiner’s decision are governed by KCC 2.32.150.

3. **No other appeal provided.** Except as provided in subsections (A)(1) and (A)(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. As authorized in 43.21C.075(5), judicial review with superior court writ of review must be sought within fourteen (14)-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) by application to the superior court. Pursuant to RCW 43.21C.075(5) and (6), such a writ application shall include, or be amended within thirty (30) calendar 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.

**SECTION 3.** Chapter 12.01 of the Kent City Code, entitled “Administration of Development Regulations,” is hereby amended to read as follows:

**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.
12.01.060 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.

*Permit Processing*
Sec. 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. Ch. 2.32 KCC, Office of Hearing Examiner;
B. Ch. 11.03 KCC, Environmental Policy;
C. Ch. 12.04 KCC, Subdivisions; and
D. Ch. 14.01 KCC, Building Codes; and
E. KCC Title 15, Zoning.

Sec. 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 pre-decision hearing.” An open record hearing may be held on an appeal, to be known as an “open record appeal hearing,” if no open record pre-decision 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 mechanically produced 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, land use preparation permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, development plan review, 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.

Sec. 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/manager shall determine the proper Process type procedure for all applications. If there is a question as to the appropriate Process type of procedure, the planning director/manager 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 procedures may be treated processed collectively under the highest numbered Process type procedure required for any part of the application or treated processed individually under each Process type of the procedures identified by the chapter. An applicant may ask that his or her application be treated processed collectively or individually. If the application is administered processed under the individual Process procedure option, the highest numbered Process procedure must be finalized processed prior to the subsequent lower numbered Process being finalized processed. 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 records hearing and closed record appeals must be consolidated under the higher Process type number.
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 from 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.

**Sec. 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.
<table>
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<tbody>
<tr>
<td>Applications</td>
<td>Development plan and Zoning permit review (1)</td>
<td>Administrative design review (1)</td>
<td>Conditional use permit (+4)(5) (7)</td>
<td>Planned unit development (5)(6) (8)(10)</td>
<td>Zoning of newly annexed lands (5)(6) (8)(10)</td>
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<td>(+6)(7)</td>
<td>(+6)(7)</td>
<td>(7)</td>
<td>(10)</td>
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<tr>
<td>Performance standards procedures (1)</td>
<td>Shoreline substantial development permit (1)</td>
<td>Sign variance (+4)(5) (10)</td>
<td>Rezone (5)(6)</td>
<td>(8)(10)</td>
<td>Area-wide rezones to implement new city policies (5)(6) (8)(10)</td>
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<td>(6)(7)</td>
<td>(9)</td>
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<tr>
<td>Sign permit (1)</td>
<td>Accessory dwelling unit permit (1)</td>
<td>Special home occupation permit (+4)(5)</td>
<td>Rezone (5)(6)</td>
<td>(8)(10)</td>
<td>Comprehensive plan amendment (5)(6) (108)</td>
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<td>(6)(7)</td>
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<td>(108)</td>
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<td>Lot line adjustment (1)</td>
<td>Administrative variance (1)</td>
<td>Variance (+4)(5)</td>
<td>Development regulations (5)(6)</td>
<td>(108)</td>
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<td>(6)(7)</td>
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<tr>
<td>Administrative interpretation (1)</td>
<td>Downtown design review, all except for minor remodels (3)(1) (6)(7)</td>
<td>Shoreline conditional use permit (+4)(5) (7) (9)</td>
<td>Zoning map amendments (5)(6) (108)</td>
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<td>(6)(7)</td>
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<td>Application conditional certification multi-family tax exemption (1) (8), all other multi-family tax exemption (1) (7)</td>
<td>Downtown design review, only minor remodels (1) (6)(7)</td>
<td>Shoreline variance (+4)(5) (8)(9)</td>
<td>Zoning text amendments (5)(6) (108)</td>
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<tr>
<td>Development plan review (planning manager, building official, or public works director) (7)</td>
<td>Multifamily design review (1) (6)(7)</td>
<td>Preliminary plat (+5)(6) plus (10)</td>
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<td>Administrative approval/WTF (1) (6)(7)</td>
<td>Binding site plan (+10)(2) (7) (7)</td>
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<tr>
<td>Short subdivision (+4)(4) (6)(7)</td>
<td>Planned unit development (+4)(5) plus (7) (10)</td>
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<tr>
<td>(1) Final decision made by planning director/manager</td>
<td>(76) Appeal to hearing examiner</td>
<td>(87) Appeal to city council</td>
<td>(18) Appeal to superior court</td>
<td>(9) Appeal to shoreline hearings board</td>
<td>(10) Final decision by binding-site plan committee</td>
</tr>
<tr>
<td>(2) Final decision by binding site plan committee</td>
<td>(77) Appeal to city council</td>
<td>(18) Appeal to superior court</td>
<td>(9) Appeal to shoreline hearings board</td>
<td>(10) Final decision by binding-site plan committee</td>
<td>(10) No administrative appeals</td>
</tr>
<tr>
<td>(3) Final decision made by downtown design review committee</td>
<td>(77) Appeal to city council</td>
<td>(18) Appeal to superior court</td>
<td>(9) Appeal to shoreline hearings board</td>
<td>(10) Final decision by binding-site plan committee</td>
<td>(10) No administrative appeals</td>
</tr>
<tr>
<td>(4) Final decision made by short subdivision committee</td>
<td>(83) Appeal to city council</td>
<td>(18) Appeal to superior court</td>
<td>(9) Appeal to shoreline hearings board</td>
<td>(10) Final decision by binding-site plan committee</td>
<td>(10) No administrative appeals</td>
</tr>
<tr>
<td>(5) Final decision made by hearing examiner</td>
<td>(83) Appeal to city council</td>
<td>(18) Appeal to superior court</td>
<td>(9) Appeal to shoreline hearings board</td>
<td>(10) Final decision by binding-site plan committee</td>
<td>(10) No administrative appeals</td>
</tr>
<tr>
<td>(6) Final decision made by city council</td>
<td>(83) Appeal to city council</td>
<td>(18) Appeal to superior court</td>
<td>(9) Appeal to shoreline hearings board</td>
<td>(10) Final decision by binding-site plan committee</td>
<td>(10) No administrative appeals</td>
</tr>
</tbody>
</table>
### B. Process procedures decisions

The following table lists the Process type and the corresponding procedures.

<table>
<thead>
<tr>
<th>Project Permit Applications (Processes I – V)</th>
<th>Legislative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requires pre-application conference</td>
<td>Yes, for projects requiring SEPA review</td>
</tr>
<tr>
<td>Notice of application</td>
<td>Yes, for projects requiring SEPA review</td>
</tr>
<tr>
<td>Recommendation made by</td>
<td>N/A</td>
</tr>
<tr>
<td>Final decision made by</td>
<td>Planning director, building official, or public works director as applicable</td>
</tr>
<tr>
<td>Open record hearing/open record appeal hearing</td>
<td>Only if appealed, then before hearing examiner</td>
</tr>
<tr>
<td>Open record appeal</td>
<td>Yes, if appealed, then before hearing examiner</td>
</tr>
<tr>
<td>Open record hearing</td>
<td>No</td>
</tr>
<tr>
<td>Reconsideration</td>
<td>No</td>
</tr>
</tbody>
</table>
Sec. 12.01.050. Exemptions from project permit application processing.

A. General exemptions. The following permits or approvals are specifically excluded from the procedures set forth in this chapter:

1. Landmark designations;
2. Street vacations; and
3. Street use permits.
4. Pursuant to RCW 36.70B.140(62), 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, boundary line adjustments, or other construction permits.

5. Administrative approvals which are categorically exempt from environmental review under SEPA (Chapter 43.21C RCW) and the city's SEPA/environmental policy ordinance, Ch. 11.03 KCC, or for which environmental review has been completed in connection with other project permits.

Sec. 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.

Sec. 12.01.070. Process VI legislative actions.
A. Legislative actions. The following Process VI actions are legislative, and are
   not subject to the procedures 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 amendments;
   4. Development regulations and zoning text amendments; and
   5. Other similar actions that are non-project related.

Sec. 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 so that the city staff can acquaint
   the applicant can be acquainted with the requirements of the Kent City Code. Pre-
   application conferences are required for Process I, II, III, and IV permits which require
   environmental review. Only one (1) pre-application conference shall be required for
all project permit applications related to the same project. Pre-application conferences shall precede the submittal of any project permit application, including an environmental checklist. The planning manager may waive in writing the requirement for a pre-application conference for proposals that are determined not to be of a size and complexity to require the detailed analysis of a pre-application conference.

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 department. 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 within five (5) working days 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 12.01.080(D)(1) shall not bind or prohibit the city’s future application or enforcement of the applicable law.
Sec. 12.01.090. Project permit applications.

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

Sec. 12.01.100. Submission and acceptance of application.

A. **Determination of completeness.** Within twenty-eight (28) calendar days after receiving a project permit application for review for completeness, the city shall mail or personally provide a written determination of completeness to the applicant, which to the extent known by the city identifies other agencies with jurisdiction over the project permit application and states either:

1. That the application is complete; or
2. That the application is incomplete and what is necessary to make the application complete.

If the city does not provide a written determination to the applicant that the application is incomplete, the application shall be deemed complete. The time period guidelines for review of project permit applications begin following the determination of a complete application.

B. **Additional information for “complete applications.”** A determination of completeness shall be made when an application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The city’s determination of completeness shall not preclude the city from requesting additional information or studies either at the time of the notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposal.

C. **Procedure for “incomplete applications.”**

1. Prior to a determination of a complete application, if the applicant receives a written determination from the city that an application is not complete, the applicant shall have up to ninety (90) calendar days to submit the necessary information to the city. Within fourteen (14) calendar days after an applicant has
submitted the requested additional information, the city shall make the determination of completeness as described in KCC 12.01.100(A) above, and notify the applicant in the same manner.

2. If the applicant either refuses in writing to submit additional information or does not submit the required information within the ninety (90) calendar day period, the application shall lapse because of a lack of information necessary to complete the review.

D. **Date of acceptance of application.** When the project permit application is determined to be complete, the planning director manager shall accept it and note the date of acceptance.

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

**Sec. 12.01.105. Application vesting.** A project permit application shall vest upon the submission of a fully completed project permit application, as defined in KCC 12.01.100. 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 12.01.100(D).

**Sec. 12.01.110. Procedure for complete, but “incorrect applications”.**

A. Following a determination 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 ninety (90) calendar days to submit corrected information.

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 time period set forth in subsection (A) shall be repeated. This process may continue until complete or corrected information is obtained.
C. If the applicant either refuses in writing to submit corrected information or does not submit the corrected information within the ninety (90) calendar day period, the application shall lapse.

D. If the requested corrected information is sufficient, the city shall continue with project review, in accordance with the time calculations exclusions set forth in KCC 12.01.180.

Sec. 12.01.120. Referral and review of project permit applications. Within ten (10) calendar days of accepting a complete application, the planning manager 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 manager 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.

Sec. 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.
Sec. 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 after the city has made a determination of completeness pursuant to KCC 12.01.100(A); 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 pre-decision hearing is required.

C. Contents. The notice of application shall include:

1. The case file number(s), the date of application, the date of the determination of completeness for the 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;

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 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 department by 4:30 p.m. on the last day of the comment period. Comments may be mailed, personally delivered or sent by facsimile. Comments should be as specific as possible.

F. Posted notice of application. In addition to the mailed notice of application, the city will provide notice of application at Kent City Hall, and in the register for public review at the planning services department 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 the planning services office department as follows: the applicant shall apply to the city for issuance
of the notice board, and shall pay to the deposit with the planning services office department the amount of money on the fee schedule currently approved by the city council and available at the planning services office, one hundred fifty dollars ($150). Upon return of the notice board in good condition to the planning department by the applicant, seventy-five dollars ($75) of the initial notice board deposit shall be refunded to the applicant.

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:
      
      (1) The site does not abut a public road; or
      
      (2) Additional public notice boards are required under other provisions of the Kent City Code; or
      
      (3) The planning manager/director determines that additional notice boards are necessary to provide adequate public notice.

   d. Notice boards should be:
      
      (1) Maintained in good condition by the applicant during the notice period;

      (2) In place at least fifteen (15) calendar days prior to the end of any required comment period; and

      (3) Removed by the applicant after expiration of the applicable notice period, and returned to the city within seven (7) calendar days after the end of the notice period.

   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 an official newspaper of general circulation in the area where the proposal is located is required for Process I and II permits requiring SEPA review, short plats, and all Process III, IV, and all Process 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 may be reviewed.

H. Notice of public hearing:

1. Notice of public hearing for all types of applications. The notice given of a public hearing required in this chapter shall contain:
   a. The name of the applicant or the applicant’s representative;
   b. 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;
   e. The date, time, and place of the hearing;
d. The nature of the proposed use or development;

e. A statement that all interested persons may appear and provide testimony;

f. 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/admitted;

g. The name of a city representative to contact and the telephone number where additional information may be obtained;

h. 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

i. 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 of reproduction.

2. Mailed notice of public hearing. Mailed notice of the public hearing shall be provided by the city as follows:

a. Process I, II and V actions. No public notice is required because no public hearing is 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.

b. Process III and IV actions. The notice of public hearing shall be mailed to:

(1) The applicant;

(2) 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

(3) Any person who submits written comments on an application.
e. **Process IV preliminary plat actions.** In addition to the general notice of public hearing requirements for Process IV actions above, additional notice shall be provided as follows:

(1) 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.

(2) 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.

d. **Process VI actions.** For Process VI legislative actions, the city shall publish notice as described in subsection (H)(3) of this section, and use all other methods of notice as required by RCW 35A.12.160.

3. **Procedure for posted or published notice of public hearing.**

a. Posted notice of the public 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 subsection (F) of this section.

b. Published notice of the public hearing is required for all Process III and IV procedures. The published notice shall be published in a newspaper of general circulation within the city and contain 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 may be reviewed.

4. Time and cost of notice of public hearing:
   a. Notice shall be mailed, posted and first published not less than ten (10) calendar days prior to the hearing date. Any posted notice shall be removed by the applicant within seven (7) calendar days following the conclusion of public hearing(s).

Hl. Shoreline master program permits.
   1. Notice of the application of 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 management master program.

Sec. 12.01.145. Notice of public hearing.
A. Notice of public hearing for all types of applications. The notice given of a public 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

Permit Processing
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 public hearing. Mailed notice of the public hearing shall be provided by the city as follows:

1. Process I, II and V actions. No public notice is required because no public hearing is 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 public 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 offices, regarding the project permit.

3. Process IV preliminary plat actions. In addition to the general notice of public 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
adjacent owned parcels.

4. **Process VI actions.** For Process VI legislative actions, the city shall
publish notice as described in subsection (H)(3) of this section, and use all other
methods of notice as required by RCW 35A.12.160.

C. **Procedure for posted or published notice of public hearing.**

1. Posted notice of the public 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 subsection (F) of this section.

2. Published notice of the public hearing is required for all Process III and
IV procedures. The published notice shall be published in a newspaper of general
circulation within the city and contain the following information:

   (a) Project location;
   (b) Project description;
   (c) Type of permit(s) required;
   (d) Comment period dates; and
   (e) Location where the complete application may be reviewed.

D. **Time and cost of notice of public hearing.**

1. Notice shall be mailed, posted and first published not less than ten (10)
calendar days prior to the hearing date. Any posted notice shall be removed by the
applicant within seven (7) calendar days following the conclusion of public hearing(s).

Sec. 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 KCC 12.01.150(B) shall be controlling.
6. Nothing in this section limits the city from asking more specific or related questions in subsections (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 KCC 12.01.150(B) 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:
      (1) A comprehensive plan or subarea plan adopted under Chapter 36.70A RCW; or
      (2) 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 KCC 12.01.150(E)(1)(b) above;
   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 reexamine alternatives or hear appeals on the items identified in KCC 12.01.150(B) 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.

**Sec. 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 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 advise 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) below.
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.

Sec. 12.01.160. Open record public hearings.

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

B. Responsibility of the planning manager director for hearing. The planning manager 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 pre-decision 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 a copy of the notice of decision to those required by this code to receive such decision.

C. *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.

D. *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 advise 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) below.

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;
   e. 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.

E. 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.

CF. 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.

DG. *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 (G)(1) and (G)(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 examiner is unable to formulate a recommendation on a project permit, the hearing body examiner may decide to forward the project permit to the city council to render a decision without a recommendation.

EH. Recommendation/decision. The hearing body shall issue a recommendation or decision, as applicable, within fourteen (14) calendar days of the record being closed.

FH. 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. A request for reconsideration temporarily suspends the appeal deadline. 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. If the reconsideration is denied, the appeal deadline of the hearing examiner’s decision shall recommence for the remaining number of days. If a request for reconsideration is accepted, a decision is not final until after a decision on reconsideration is issued.

Sec. 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 and twenty (120) calendar days, as calculated by KCC 12.01.180, after the city notifies the applicant that the application is complete. The time frames set forth in this section shall apply to project permit applications filed on or after April 1, 1996.

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) and (H)(2)(b)(1) and (3). 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), 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.

Sec. 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 and twenty (120) day time limit in KCC 12.01.070 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 requires the applicant 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
local government.

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.

Sec. 12.01.190. **Open record appeal**—Closed record hearings and administrative appeals.

A. **Appeals of decisions.**—This section allows for administrative open record appeals as provided in the framework in KCC 12.01.040. Administrative open record appeals are heard by the hearing examiner, downtown design review committee or city council, as applicable.

B. **Consolidated appeals.**

1. All open record appeals on a project permit application decisions, 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 Administrative appeals.** Only parties of record may initiate an administrative 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 department by mail, personal delivery or received by fax before 4:30 p.m. on the last business day of the appeal period. If an applicant initiates an administrative appeal, the administrative appeal of the project decision and of any environmental determination issued at the same time as the project decision shall be filed within twenty-one (21) calendar days after the notice of decision has been made and is appealable.
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, downtown design review committee or city council, as applicable, or is withdrawn.

H. Notice of administrative appeal. Public notice of the appeal shall be given as provided in KCC 12.01.145(B)(2)(a) and (b)(2)(b)(1) and (3).

I. Procedure for closed record decision/appeal. The closed record appeal/decision/appeal hearing shall be on the record before the hearing body and no new evidence may be presented. The following subsections of this chapter shall apply to a closed record decision/appeal hearing:

1. 12.01.160(C) Conflict of Interest;
2. 12.01.160(D) Ex Parte Communications;
3. 12.01.160(E) Disqualification;
4. 12.01.160(F) Burden and Nature of Proof;
5. 12.01.160(G)(1), (2), (3), (4), and (6) Order of Proceedings; and
6. 12.01.170 Notice of Decision.

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

Sec. 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 hearings 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 received by fax 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, 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).

E. 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.
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.

Order of Proceedings. The closed appeal shall only be open for oral argument by the parties to the appeal.

Burden of Proof. The burden of proof is on the appellant.

Sec. 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".

SECTION 4. Section 14.01.020 of the Kent City Code, entitled "Amendments to Uniform Building Code," is hereby amended to read as follows:


A. Building code appendices adopted. Divisions I, II, and IV of Chapter 3, Chapter 15 and Chapter 33 of the Appendix of the Uniform Building Code, 1997 Edition (as adopted in KCC 14.01.010), are adopted, except that the director of public works shall have the authority to enforce and interpret Chapter 33 of the Appendix of the Uniform Building Code, 1997 Edition, and accordingly, all references to the "building official" in Chapter 33 of the Appendix shall be substituted with the words, "Director of Public Works."
B. **Lot lines and setback lines.** Notwithstanding the authority of the building official to administer and enforce the building code, the building official shall have no duty to verify or establish lot lines or setback lines. No such duty is created by this chapter, and none shall be implied. The location of lot lines and/or setback lines at a development and construction related thereto shall be the responsibility of the applicant/owner.

C. **Expiration of Project Permit Application.**

1. Project permit applications that are not subject to Ch. 12.01 KCC and that do not require SEPA review, shall expire by limitation if no permit is issued within one hundred and eighty (180) days after the determination that a fully complete project permit application, as defined in KCC 14.11.020, has been submitted. Plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action on the permit application for a period not exceeding one hundred and eighty (180) days upon request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. An application shall not be extended more than once. In order to renew action on an expired application, the applicant shall resubmit plans and pay a new review fee.

2. Project permit applications subject to Ch. 12.01 KCC are not subject to the expiration dates above. Said project permit applications shall be subject to the deadlines in Ch. 12.01 KCC.

**SECTION 5.** Chapter 14.11 of the Kent City Code, entitled “Vesting of Development Permit Applications,” is hereby amended to read as follows:

**CH. 14.11. VESTING OF DEVELOPMENT PERMIT APPLICATIONS**
Sec. 14.11.010. Vesting. Vesting of project development permit applications occur upon the determination that submission of a fully completed project development permit application, as defined in KCC 12.01.100, has been submitted. Vesting shall only apply to land use regulations in effect on the land at the time a fully completed application has been submitted. A project development permit application shall be reviewed under the land use regulations in effect at that time. To establish a vested right, the applicant shall file an application on a form furnished by the building official, which form may be amended from time to time. Every application shall, at a minimum, provide the information required by the city in the Uniform Building Code for filing of project development permit applications as well as other such information required by the building official as set forth in the application form and applicable codes.

Sec. 14.11.020. Completed application. In order to be accepted as fully completed herein, an application for a development permit shall be reviewed by the building official, or his/her designee, to verify that all information required has been provided in a clear and usable format. Once it has been determined that all required information has been provided, the building official, or his/her designee, shall accept the filed application and determine the date the application is considered complete and therefore vested.

Sec. 14.11.030. Other.
A. A completed development permit application, as defined herein, does not mean or imply approval of the project.
B. A completed development permit application herein may not necessarily constitute a completed application for the purpose of processing the same. Additional information, steps or procedures may need to be taken or completed in order to process and obtain the requested permit.
C. Vesting hereunder shall apply only to the scope of the project applied for under the permit application.
D. Vesting under this chapter expires with the expiration of the development project permit application or with the expiration of a permit issued pursuant to an application.

**SECTION 6. - Severability.** If any one or more section, subsections, 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 7. - Effective Date.** This ordinance shall take effect and be in force thirty (30) days from and after passage as provided by law.

JIM WHITE, MAYOR

BRENDA JACOBER, CITY CLERK

ROGER LUBOVICH, CITY ATTORNEY
PASSED: 18 day of September, 2001.
APPROVED: 18 day of September, 2001.
PUBLISHED: 18 day of September, 2001.

I hereby certify that this is a true copy of Ordinance No. 3574 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