Ordinance No. 3752

(Amending or Repealing Ordinances)

CFN=131 – Zoning Codes
Passed – 5/17/2005
Amend Ch. 12.04, 15.08, & 15.09 of the KCC; Re: Appeal Procedures
(Amending Secs. 12.04.695; 15.08.040(F)(5); 15.08.400(F)(7); 15.909.030(F);
15.09.040(D))

Amending Ords. 1840;2806;2863;3340;3424;3439;3511;3575; 3600;3643

Amended by Ord. 3906 (Amended Ch. 12.04; Repealed Sec. 12.04.695)
Amended by Ord. 4300 (Sec. 15.08.040(F))
ORDINANCE NO. 3752

AN ORDINANCE of the City Council of the City of Kent, Washington, amending sections 12.04.695, 15.08.040, 15.08.400, 15.09.030, and 15.09.040 of the Kent City Code, to correct inconsistencies in appeal provisions.

REQUITALS

A. In 2001 when the City updated code provisions relating to the administration of development regulations, the amendments made to procedures for appeals did not carry over into other code sections addressing appeal procedures. This ordinance amends the appeal provisions in sections 12.04.695, 15.08.040, 15.08.400, 15.09.030, and 15.09.040 of the Kent City Code to be consistent with what was approved in Ordinance No. 3574 passed on September 18, 2001.

B. On April 4, 2005, the City sent the required notification under RCW 36.70A.106 to the state of Washington of the proposed amendment to the zoning code and requested expedited review. Expedited review was received and granted on April 20, 2005.
C. On April 25, 2005, the Land Use & Planning Board held a public hearing on the issue and at the conclusion of the public hearing the Land Use & Planning Board forwarded a recommendation to the Kent City Council.

D. On May 17, 2005, the City Council voted to amend sections 12.04.695, 15.08.040(F), 15.08.400(F), 15.09.030(F), and 15.09.040(D) of the Kent City Code to correct inconsistencies in appeal provisions.

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

ORDINANCE

SECTION 1. – Amendment. Section 12.04.695 of the Kent City Code is amended as follows:

Sec. 12.04.695. City council closed record appeal.

The decision of the hearing examiner shall be final, unless an appeal is made by a party of record to the city council within fourteen (14) calendar days following the issuance of the notice of decision and in accordance with the requirements of KCC 12.01.190195. The appeal shall be in writing and shall be processed pursuant to Ch. 2.32 KCC. The appeal shall be heard by the city council in a closed record appeal hearing. No new evidence may be presented. The decision of the city council shall represent final action of the city and is appealable only to superior court.
SECTION 2. – Amendment. Section 15.08.040(F) of the Kent City Code is amended as follows:

Sec. 15.08.040. Home occupations.

... 

F. Special home occupation permits. A special home occupation permit shall be required for the following home occupations:

1. Music lessons.
2. Dance lessons.
3. Art lessons.
4. Academic tutoring.
5. Automobile detailing.

A special home occupation permit may only be issued as follows:

1. Application. Applications for a special home occupation permit under this subsection shall be subject to the procedures and requirements of Chs. 2.32 and 12.01 KCC. The application fee for a special home occupation permit shall be the same as for administrative variances unless otherwise established by city council resolution.

2. Criteria for approval. In conducting a hearing on an application for a special home occupation permit, the hearing examiner shall consider the nature and conditions of all adjacent uses and structures. A special home occupation permit may only be approved by the hearing examiner if the hearing examiner finds that such permit will not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the property is located, and that the issuance of such special home occupation permit will be consistent with the spirit and purpose of this section and subject to the applicable provisions of Ch. 12.01 KCC.

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3. **Conditions of approval.** In approving a special home occupation permit, the hearing examiner may impose such requirements and conditions with respect to location, installation, construction, maintenance and operation and extent of open spaces in addition to those expressly set forth in this section, as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest.

4. **Issuance.** Any special home occupation permit application approved by the hearing examiner shall be forwarded to the planning department for issuance.

5. **Appeal of decision.** The decision of the hearing examiner on a special home occupation permit application may be appealed to the city council pursuant to Chs. 2.32 and 12.01 KCC shall be final. Any appeal of the hearing examiner’s decision shall be pursuant to the appeal provisions of Ch. 12.01 KCC.

**SECTION 3. – Amendment.** Section 15.08.400(F) of the Kent City Code is amended as follows:

Sec. 15.08.400. Planned unit development, PUD.

F. **Application process.** The application process includes the following steps: informal review process, compliance with the State Environmental Policy Act, community information meeting, development plan review, and public hearing before the hearing examiner.

1. **Informal review process.** An applicant shall meet informally with the planning department at the earliest possible date to discuss the proposed PUD. The purpose of this meeting is to develop a project that will meet the needs of the applicant and the objectives of the city as defined in this title.

2. **SEPA compliance.** Compliance with the State Environmental Policy Act and regulations and city SEPA requirements shall be completed prior to development plan review.
3. **Development plan review.** After informal review and completion of the SEPA process, a proposal shall next be reviewed by city staff through the development plan review process. Comments received by the project developer under the development review process shall be used to formalize the proposed development prior to the development being presented at a public hearing before the hearing examiner.

4. **Community information meeting.**

   a. A community information meeting shall be required for any proposed PUD located in a residential zone or within two hundred (200) feet of a residential zone. At this meeting, the applicant shall present the development proposed to interested residents. Issues raised at the meeting may be used to refine the PUD plan. Notice shall be given in at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing. Written notice shall be mailed first class to all property owners within a radius of not less than two hundred (200) feet of the exterior boundaries of the property subject to the application. Any alleged failure of any property owner to actually receive the notice of hearing shall not invalidate the proceedings.

   b. Nonresidential PUDs not located within two hundred (200) feet of a residential zone shall not require a community information meeting.

5. **Public notice and hearing examiner public hearing.** The hearing examiner shall hold at least one (1) public hearing on the proposed PUD and shall give notice thereof in at least one (1) publication in the local newspaper at least ten (10) days prior to the public hearing. Written notice shall be mailed first class to all property owners within a radius of not less than two hundred (200) feet of the exterior boundaries of the property subject to the application. Any alleged failure of any property owner to actually receive the notice of hearing shall not invalidate the proceedings.

6. **Consolidation of land use permit processes.** The PUD approval process may be used to consolidate other land use permit processes, which are required by other sections of this title. The public hearing required for the PUD may

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serve as the public hearing for the conditional use permit, subdivision, shoreline substantial development, and rezoning if such land use permits are a part of the overall PUD application. When another land use permit is involved which requires city council approval, the PUD shall not be deemed to be approved until the city council has approved the related land use permit. If a public hearing is required for any of the categories of actions listed in this subsection, the hearing examiner shall employ the public hearing notice requirements for all actions considered which ensure the maximum notice to the public.

7. **Hearing examiner decision.** The hearing examiner shall issue a written decision within ten (10) working days from the date of the hearing. Parties of record will be notified in writing of the decision. **For PUDs which propose a use permitted in the underlying zoning district, the hearing examiner’s decision is final unless notice of appeal is filed with the city clerk within fourteen (14) days of receipt by the developer of the decision.** For PUDs which propose a use which is not typically permitted in the underlying zoning district as provided in subsection (B)(4) of this section, the hearing examiner shall forward a recommendation to the city council, which shall have the final authority to approve or deny the proposed PUD. For a proposed residential PUD that includes condominiums as outlined in subsection (B)(4) of this section, a condition of approval by the city council shall be that for each development phase the applicant shall submit a recorded copy of the covenants, conditions, and restrictions recorded against the property. Within thirty (30) days of receipt of the hearing examiner’s recommendation, the city council shall, at a regular meeting, consider the application. **Any appeal from the final decision of the hearing examiner and city council shall be pursuant to the appeal provisions of Ch. 12.01 KCC.**

8. **Effective date.** In approving a PUD, the hearing examiner shall specify that the approved PUD shall not take effect unless or until the developer files a completed development permit application within the time periods required by this title as set forth in subsection (G) of this section. No official map or zoning text designations shall be amended to reflect the approved PUD designation until such time as the PUD becomes effective.

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**SECTION 4.** - Amendment. Section 15.09.030(F) of the Kent City Code is amended as follows:

Sec. 15.09.030. Conditional use permit.

... F. *Appeals.* The decision of the hearing examiner shall be final, unless an appeal is made to the city council within fourteen (14) calendar days after the hearing examiner’s notice of decision. The appeal shall be in writing to the city council and filed with the city clerk in accordance with the procedures established in KCC 12.01.190. Any appeal of the hearing examiner’s decision shall be pursuant to the appeal provisions of Ch. 12.01 KCC.

**SECTION 5.** - Amendment. Section 15.09.040(D) of the Kent City Code is amended as follows:

Sec. 15.09.040. Variances.

... D. *Appeals.* The decision of the hearing examiner shall be final, unless an appeal is made to the city council within fourteen (14) calendar days after the hearing examiner’s notice of decision. The appeal shall be in writing to the city council and filed with the city clerk in accordance with the procedures established in KCC 12.01.190. Any appeal of the hearing examiner’s decision shall be pursuant to the appeal provisions of Ch. 12.01 KCC.

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SECTION 6. – Savings. The existing sections 12.04.695, 15.08.040(F), 15.08.400(F), 15.09.030(F), and 15.09.040(D) of the Kent City Code, which are amended by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 7. – 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 portions of this ordinance and the same shall remain in full force and effect.

SECTION 8. – Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after passage as provided by law.

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 17 day of May, 2005.
APPROVED: 17 day of May, 2005.
PUBLISHED: 21 day of May, 2005.

Amend Chapter 12.04, 15.08, and 15.09 of the KCC
Re: Appeal Procedures
I hereby certify that this is a true copy of Ordinance No. 3752 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

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