

repealed by 2938

ORDINANCE NO. 2165

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO WATERFRONT AND SHORELINE MANAGEMENT, ESTABLISHING A SUBSTANTIAL DEVELOPMENT PERMIT AS REQUIRED BY CHAPTER 286, LAWS OF 1971, FIRST EX. SESS. (SHORELINE MANAGEMENT ACT) FOR ALL PROPERTIES SUBJECT TO THE SHORELINE MANAGEMENT ACT AND ESTABLISHING CRITERIA FOR THE ISSUANCE OF SUCH PERMITS.

BE IT ORDAINED by the City Council of the City of Kirkland as follows:

PART I - PROCEDURES FOR SUBSTANTIAL DEVELOPMENT PERMIT

Section .01. Purpose. The purpose of this ordinance is to establish a permit procedure in accordance with the requirements of Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act).

Section .02. Substantial Development Permit - Creation of: Every development which falls within the category of substantial development as defined in Part II of this ordinance shall be required to apply for and receive a substantial development permit prior to the commencement of any construction, fill or alteration of the existing shoreline and associated wetlands on the site.

Section .03. Exceptions to Permit Requirements as Contained in Chapter 286, Laws 1971, 1st Ex. Session: Substantial development begun prior to the effective date of Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act) shall not require a permit except under the following circumstances:

- (1) Where the activity was unlawful prior to the effective date of the Shoreline Management Act of 1971.
- (2) Where there has been a period of 90 days of dormancy in the project between its inception and the effective date of the Shoreline Management Act of 1971.

Section .04. Substantial Development Permit Application Procedure. The owner of any property within the City of Kirkland who in order to develop his property must apply for a substantial development permit, as defined in this Ordinance, shall file with the Planning Department a petition signed and verified by him on forms to be provided by the City. This application shall set forth the proposal and shall have attached to it

site plans indicating the existing condition and the proposed development of the property, drawn to scale as follows:

- (1) Site Plan 1 - Site plan shall indicate all natural physical features of said property, including surface waters and elevations (mean, low and high), trees and vegetation, topography and soil conditions. To aid in the preparation for such application, the Planning Department shall make available to such applicant for his inspection and use such data and studies relating to the natural physical features as are then current and on file in the Planning Department. The plan shall also show all existing structures or other man-made features, all fully dimensioned.
- (2) Site Plan 2 - Site plan 2 shall include the following as a minimum: Location and height of all proposed buildings; all important dimensions such as property lines, building setbacks, proposed landscaping areas; parking areas with traffic patterns showing ingress, egress and internal circulation; and adjacent property lines for a distance of at least 400 feet from all property lines.
- (3) An application for a Substantial Development Permit for a building or structure exceeding thirty-five (35) feet above the centerline elevation of the frontage road and the existing side property lines shall be subject to the following conditions:
  - (a) A section through the highest element of the building and including the entire slope upland from the building to a grade elevation at least twenty-five (25) feet above the highest element of the building shall be provided by the developer, provided, however, that as to Lake Washington shoreline, the slope upland need not extend east of the Burlington Northern Railroad right-of-way. (See Illustration 1, page 3.)
  - (b) The developer shall provide a map indicating the location of all existing structures within the distance established in the preceding section and four hundred feet from all property lines.

ILLUSTRATION (1)

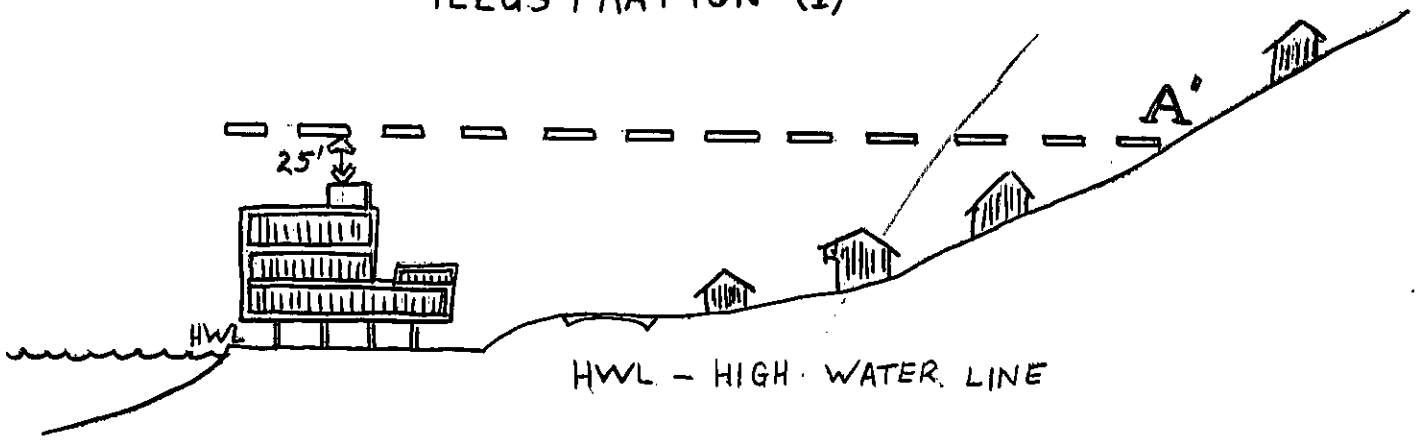
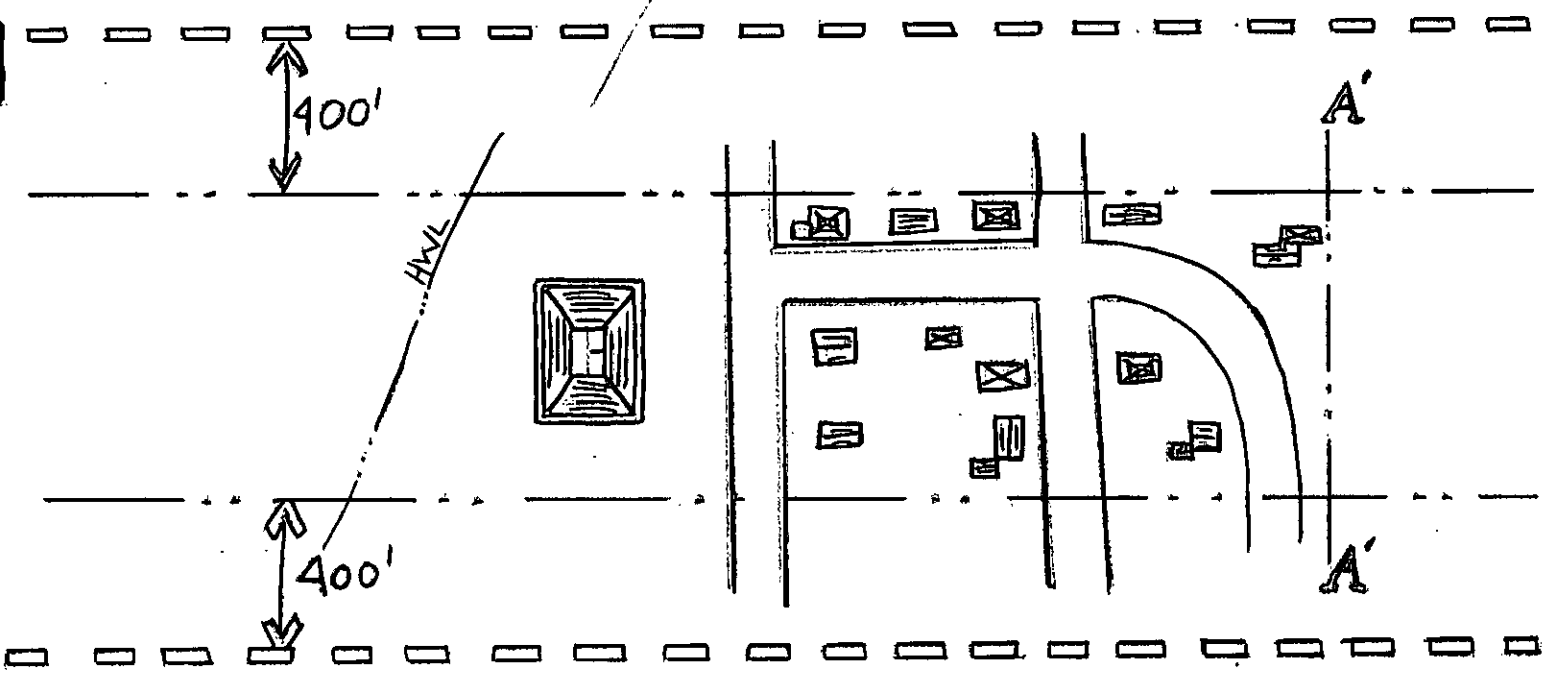


ILLUSTRATION (2)



He shall further be required to furnish the names and addresses of all persons owning property within this area as recorded by the King County Treasurer. (see illustration 2, page 3)

- (c) The drawings shall be available for public review, at least fourteen days before any public hearing with regard to the proposed development.
- (4) An 8½ x 11 reduction of all of the required site plans shall also be required, along with the original site plans.

Section .05. Criteria for Granting Substantial Development Permits: Consideration by the Planning Commission and City Council shall include the following criteria in granting a substantial development permit:

The City Council declares that the interests of all of the people shall be paramount in the management of shorelines of both statewide and local significance. The Planning Commission and the City Council in considering permit applications for substantial development shall give preference to uses in the following order of preference, which:

- (1) Recognize and protect the local interests as they have been defined and declared in the waterfront element of the Comprehensive Plan as adopted in Ordinance No. 2160;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long-term over short-term benefits;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shoreline;
- (6) Increase recreational opportunities for the public in the shoreline.

In the implementation of this policy:

- (1) The use requested shall be in conformity with the adopted comprehensive plan, the zoning ordinance, the provisions of this ordinance, Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act), and the public interest. The

burden to prove that the development meets the criteria of the Shoreline Management Act of 1971 rests with the applicant.

- (2) An architectural site plan showing the proposed development and its relationship to surrounding areas as described in Section .04 shall be required.
- (3) An analysis of the physiographic elements existing in planned municipal services, including water supply (domestic and emergency demand), sewage collection or treatment and storm water control shall be prepared by the City Planning staff in conjunction with related city departments as an element of the administrative report.

Section .06. Public Notice: Notice of public hearing before the City Council and/or Planning Commission shall be made by publishing in the official publication for the City of Kirkland twice. The first such publication shall be not less than 30 days, and the second such publication shall be not less than 7 days prior to the date set for the hearing. Postcard notice of hearing shall also be mailed to each property address and owner of record within the area affected, as delineated in Section .04 of this ordinance. The date of mailing shall be not less than 7 days in advance of the date of the hearing.

Section .07. Planning Commission Action. The Planning Department, upon receipt of a petition by the land owner, shall make an investigation of the matters involved in the proposal and prepare in advance of the public hearing an administrative report which shall set forth an analysis and recommendation in accordance with the criteria in Section .05. The Planning Department shall assign a public hearing date for the matter with the concurrence of the Chairman of the Planning Commission. Following the public hearing on the proposal, the Commission shall make recommendation to the City Council or continue the matter for further study in accordance with the alternatives as stated below:

- (1) If the Commission, after thorough study of the proposal in the petition, determines that the proposed development is in accordance with the criteria for granting Substantial Development Permits as listed in Section .05, and not detrimental to the public welfare or the property of other persons located in the vicinity, the Commission shall recommend that the City Council grant a Substantial Development Permit.
- (2) If the Commission, following a public hearing,

makes no decision on the permit or sends no recommendation to the City Council for 30 days this shall be taken as a disapproval of the permit and the owner may follow the steps of appeal as set forth in paragraph (3) below.

- (3) If the Commission recommends disapproval of the petition, that decision shall be final unless the owner files notice of appeal to the City Council with the City Clerk within 30 days of the Commission's action. Upon receiving notice of appeal to the City Council with the City Clerk within 30 days of the Commission's action. Upon receiving notice of appeal, the Council may follow the recommendation of the Commission for their reconsideration and a subsequent report to the Council, upon receipt of which the Council shall take final action within 30 days.

Section .08. Action by the City Council. From the facts and findings in the administrative report, the recommendation of the Planning Commission, and, where the Council may request the transcript of the public hearing, the City Council shall take action whether to grant with changes, or deny the application for a Substantial Development Permit. The action taken by the Council shall be by resolution and copies thereof shall be transmitted to the following:

- (1) The Applicant
- (2) The Kirkland Planning Department
- (3) The Kirkland Building Official
- (4) The Department of Public Services for the City of Kirkland
- (5) The Department of Ecology for the State of Washington
- (6) The Office of the Attorney General for the State of Washington

Section .09. Review - Shorelines Hearing Board: Disapproval of a Substantial Development Permit by the City Council is final, subject to review by the Shorelines Hearing Board, as established in Section 18, Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act). A request for review before the Shorelines Hearing Board must be filed within 30 days from the final decision date of the City Council. Copies of the request for review shall also be filed with the City of Kirkland, the Department of Ecology for the State of Washington, and the Office of the Attorney General for the State of Washington.

To insure that the provisions of Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act) are complied with, the Department of Ecology for the State of Washington or the Attorney General for the State of Washington may intervene to protect the public interest at any time within 45 days from the date of filing said request for review.

Section .10. Provision for Variance or Conditional Use for Hardship Cases. (reserved)

Section .11. Provision for Administrative Issuance of Substantial Development Permit. (reserved)

Section .12. Department of Ecology Approval - Delay in Commencement of Construction Under Development Permit:  
The Department of Ecology for the State of Washington is required under Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act) to act primarily in a supportive and review capacity with primary emphasis on assuring compliance with the policy and the provisions of the Shoreline Management Act, and to assure no uses will be allowed that are in conflict with said act.

Upon final Council approval of a Substantial Development Permit, the City shall within five days forward the application, together with the resolution granting the permit, to the Department of Ecology and the Attorney General for the State of Washington as required in Section .08 of this ordinance. In order for the Department of Ecology to function in this review capacity, no development shall occur within 45 days of final City Council approval.

The Department of Ecology for the State of Washington is further required under the Shoreline Management Act to review and approve all variances and conditional use permits granted by the City of Kirkland in connection with the development for which the Substantial Development Permit is sought prior to the start of any development or construction.

PART II - APPENDIX

Section .01. Policy Statement of Chapter 286, Laws 1971, 1st Ex. Session: The legislature finds that the shorelines of the State are among the most valuable and fragile of its natural resources and that there is great concern throughout the State relating to their utilization, protection, restoration and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the State. The legislature further finds that much of the shorelines of the State and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the State is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the State while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational and concerted effort, jointly performed by federal, state and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines.

It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The Department of Ecology, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;



- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the State's shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences, shoreline recreational uses including but not limited to parks, marinas, piers and other improvements facilitating public access to shorelines of the State and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

Section .02. Definitions as contained in Chapter 286, Laws 1971, 1st Ex. Session. (Portions underlined are amendments by the City of Kirkland).

- (a) "Shorelines" means all of the water areas of the State including resevoirs and their associated wetlands, together with the lands underlying them; except (i) shorelines of state-wide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;
- (b) "Shorelines of state-wide significance" means the following shorelines of the state:
  - (i) Those lakes, whether natural, artificial or a combination thereof, with a surface

acreage of one thousand acres or more measured at the ordinary high water mark;

- (ii) Any natural river or segment thereof west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more;
  - (iii) Those wetlands associated with (i), and (ii) of this subsection.
- (c) "Wetlands" or "Wetland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; and all marshes, bogs, swamps, floodways, river deltas, and flood plains associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 286, Laws of 1971, First Ex. Session (Shoreline Management Act); the same to be designated as to location by the department of ecology.
- (d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;
- (e) "Substantial Development" shall mean any development of which the total cost or fair market value exceeds one thousand dollars, or any development which materially interferes with the normal public use of the water, or shorelines of the state; (substantial development undertaken on the shorelines of the state prior to the effective date of Chapter 286, Laws of 1971, First Ex. Session shall mean actual construction begun upon the shoreline pursuant to a lawfully issued building permit as opposed to preliminary engineering or planning); except that the following shall not be considered substantial developments for the purpose of this ordinance:  
...  
(i) Any development of which the total cost or fair market value does not exceed

\$1000 if such development does not materially interfere with the normal public use of the water or shorelines of the state.

- (ii) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.
- (iii) Construction of the normal protective bulkhead common to single family residences.
- (iv) Emergency construction necessary to protect property from damage by the elements.
- (v) Construction of a barn or similar agricultural structure on wetlands.
- (vi) Construction or modification of navigational aids such as channel markers and anchor buoys.
- (vii) Construction on wetlands by an owner, lessee or contract purchaser of a single family residence for his own use or for the use of his family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the Comprehensive Plan and Zoning ordinances of the City of Kirkland which are in effect at the time of such construction, as well as any state requirements.

Section .03. Building Height: No permit shall be issued pursuant to Chapter 286, Laws 1971, 1st Ex. Session, for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

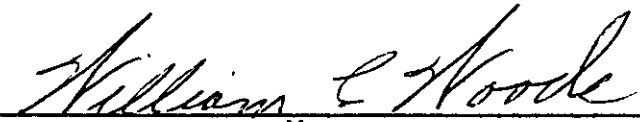
PART III - HOUGHTON COMMUNITY - EFFECTIVE DATE

Section .01. Houghton Community. To the extent that the subject matter and provisions of this ordinance are within the disapproval jurisdiction of the Houghton Community Council as created by Ordinance No. 2001, this ordinance shall become effective within the Houghton Community either upon approval of the Houghton Community Council or failure of said Community Council to disapprove within 60 days of the date of passage of this ordinance.

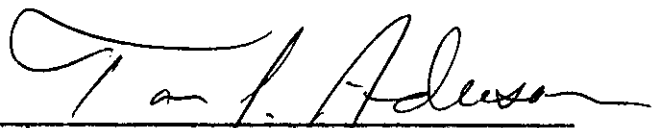
Section .02. Effective Date. Except as provided in Section 12, this ordinance shall be in full force and effect five days from and after its passage by the Council and publication as required by law.

PASSED by the Kirkland City Council in regular meeting on the 20th day of September, 1971.

SIGNED in authentication thereof on the 20th day of September, 1971.

  
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Mayor

ATTEST:

  
\_\_\_\_\_  
Director of Administration & Finance  
(ex officio City Clerk)

Approved as to form:

  
\_\_\_\_\_  
City Attorney