

## ORDINANCE NO. 1258

### AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS AND WITHIN 200 FEET LANDWARD OF SPECIAL FLOOD HAZARD AREAS; EXTENDING INTERIM REGULATIONS REQUIRING A HABITAT ASSESSMENT OR LETTER FROM NMFS OR FEMA ESTABLISHING COMPLIANCE WITH THE ENDANGERED SPECIES ACT; ESTABLISHING A WORK PLAN; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. Federal Emergency Management Agency, et al.*, 345 F. Supp. 2d 1151 (2004), the United States District Court for the Western District of Washington ruled that the Federal Emergency Management Agency ("FEMA") must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region; and

WHEREAS, as a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, that documented the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales; and

WHEREAS, cities that participate in the NFIP must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option #1 - adopt the FEMA-developed ESA compliant model ordinance; Option #2 - meet FEMA checklist for ESA compliance with current regulations; or Option #3 - permit by permit demonstration of ESA compliance; and

WHEREAS, the City originally pursued review by FEMA for Option #2 but that option cannot become effective until the City completes the update of its Shoreline Master Program, and the Planning Director has since recommended that the City adopt permanent regulations under Option #3; and

WHEREAS, in anticipation of the requirements for Option #2 being met, on September 26, 2011, the City Council adopted Ordinance No. 1223 which adopted interim regulations for a period of six months implementing Option #3 while the City awaited meeting the requirements for Option #2. Ordinance No. 1223 was extended another six months under Ordinance No. 1234; and

WHEREAS, the interim regulations adopted under Ordinance No. 1223 as extended under Ordinance No. 1234 were set to expire on September 26, 2012 and due to the approaching expiration of Ordinance No. 1234, on September 24, 2012, the Gig Harbor City Council adopted Ordinance No. 1248 adopting new interim regulations on an emergency basis in order to preserve the public health, safety, and welfare and to avoid vesting of development applications that are contrary to the provisions of this ordinance; and

WHEREAS, since the adoption of Ordinance No. 1248 the City has held a first reading and public hearing on an ordinance adopting permanent regulations under Option #3, but

because the permanent regulations cannot be effective until review by the Department of Ecology, and the interim provisions under Ordinance No. 1248 are set to expire on March 23, 2013, the City Council deems it to be in the public interest to extend the interim regulations to maintain compliance with FEMA requirements while awaiting the Department of Ecology's approval for permanent codification of regulations; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize the City to extend interim regulations for a period of six months after a public hearing and adoption of findings justifying the same; and

WHEREAS, the City Council held a public hearing on March 11, 2013 to take public testimony relating to this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to extend the interim regulations set forth in Ordinance No. 1248 for a period of six months.

Section 2. Findings in Support of Extending Interim Regulations. In addition to the findings previously made as set forth in Ordinance No. 1248, the Gig Harbor City Council makes the following additional findings:

1. The City Council adopts the recitals set forth above in support of extending the interim regulations originally adopted under Ordinance No. 1248.

2. [Other, if any.]

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Section 3. Extension of Interim Regulations. The interim regulations adopted under Ordinance No. 1248 shall remain in effect for an additional period of six months, and shall automatically expire at that time unless the same are extended as provided in RCW 36.70A.390 and RCW 35A.63.220 prior to expiration, or unless the same are repealed or superseded by permanent regulations prior to expiration.

Section 4. Work Plan. The City is presently in the process of adopting permanent regulations, having held a public hearing and first reading on the proposed permanent regulations on February 25, 2013. Once adopted by the City Council, pursuant to RCW 86.16.041, such permanent regulations cannot take effect until 30 days of filing with the Department of Ecology. The City anticipates such filing to take place in March, 2013, with approval of permanent regulations in April of 2013. In the event the Department of Ecology does not approve the City's proposed regulations, additional time will be needed to address the Department of Ecology concerns, but the City anticipates revisions, if required, can be completed within the six-month extension period for Ordinance No. 1248.

Section 5. Copy to Commerce Department. Pursuant to RCW 36.70A.106(3), the City Clerk is directed to send a copy of this ordinance to the State Department of Commerce for its files within ten (10) days after adoption of this ordinance.


Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 11th day of March, 2013.

CITY OF GIG HARBOR

  
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Mayor Pro Tem Steven Ekberg

ATTEST/AUTHENTICATED:

  
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Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

  
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Angela S. Belbeck

FILED WITH THE CITY CLERK: 03/06/13  
PASSED BY THE CITY COUNCIL: 03/11/13  
PUBLISHED: 03/13/13  
EFFECTIVE DATE: 03/18/13  
ORDINANCE NO: 1258