

**ORDINANCE NO. 857**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS OF FACT AND CONCLUSIONS TO JUSTIFY THE CONTINUED IMPOSITION OF A MORATORIUM UNDER RCW 36.70A.390 ON THE ACCEPTANCE OF APPLICATIONS FOR PLANNED UNIT DEVELOPMENTS UNDER CHAPTER 17.90 GHMC AND PLANNED RESIDENTIAL DEVELOPMENTS UNDER CHAPTER 17.89 GHMC UNTIL FEBRUARY 16, 2001, DEFINING THE DEVELOPMENT APPLICATIONS SUBJECT TO THE MORATORIUM AND AFFIRMING THE EMERGENCY NATURE OF THE MORATORIUM IMPOSED ON MAY 8, 2000.**

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WHEREAS, on May 8, 2000, the City Council passed Ordinance No. 843, adopting an immediate moratorium on the acceptance of certain nonexempt development applications for property in the City; and

WHEREAS, RCW 36.70A.390 requires that the City hold a public hearing on the moratorium within 60 days of its adoption, and that the City Council adopt findings of fact and conclusions to justify the continued imposition of the moratorium; and

WHEREAS, on June 12, 2000, at a regular City Council meeting, the City Council held a public hearing on the moratorium and accepted testimony from all members of the public desiring to be heard; and

WHEREAS, on June 12, 2000, the City Council also deliberated on the issue whether to maintain the moratorium, and voted to continue the moratorium described above; and

WHEREAS, on July 10, 2000, the City Council passed Ordinance No. 846, which adopted findings of fact and conclusions supporting a six-month moratorium, as well as a work plan for the Planning Commission to follow in the development of amendments to the PUD and PRD chapters; and

WHEREAS, Ordinance No. stated that the City Council was required to terminate the moratorium through the passage of another ordinance; and

WHEREAS, on November 13, 2000, the City Council voted to continue the moratorium until December 31, 2000; and

WHEREAS, RCW 36.70A.390 and RCW 35A.63.220 provide that a moratorium may be effective for a period of up to one year if a work plan is developed and that a six month moratorium may be renewed for one or more six month periods if a subsequent public hearing is held and findings of fact are made; and

WHEREAS, the Planning Commission developed a recommendation to the City Council in the form of amendments to the PRD and PUD chapters; and

WHEREAS, the City staff made certain changes to the recommendation to clarify procedure, and on November 13, 2000, the City Council voted to send the recommendations formulated by staff back to the Planning Commission for review;

WHEREAS, on November 16, 2000, the Planning Commission considered the staff recommendations, provided their approval of same and directed staff to send the recommendation to the City Council for a public hearing on December 11, 2000; and

WHEREAS, the City Council also scheduled a public hearing for the continuation of the moratorium, to be held on December 11, 2000; and

WHEREAS, on December 11, 2000, the City Council held a public hearing and considered whether to continue the moratorium; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include any planned unit development application or planned residential development application which was complete and submitted to the City on the effective date of Ordinance No. 843 or No. 846 or thereafter, or any planned unit development or planned residential development that has already received final approval by the City. In addition, “exempt development permits” include any other land use, subdivision or development approval that is not described as a “non-exempt development permit” in subsection “B” below.

B. **“Non-Exempt Development Permit”** shall include any planned unit development application or planned residential development application which was submitted to the City but was not complete on the effective date of Ordinance No. 843 or No. 846 or thereafter, as well as any planned unit development or planned residential development applications that are submitted to the City after that time.

Section 2. Adoption of Findings of Fact. As required by RCW 36.70A.390, the City Council hereby adopts the following findings of fact to support the continued imposition of the City’s moratorium, until February 16, 2001, on the acceptance of non-exempt development applications:

A. Purpose. The purpose of this moratorium until February 16, 2001 is to allow the City adequate time to hold a public hearing(s) to consider the recommendation of the Planning

Commission on the Planning Commission's proposed amendments to chapter 17.89 GHMC for planned residential developments and chapter 17.90 GHMC for planned unit developments. The City Council scheduled such a public hearing for December 11, 2000. A copy of the recommendations of the Planning Commission were made available to the public on November 22, 2000.

The public had an opportunity to review the recommendations and provide comment before the public hearing on December 11, 2000. The City Council chose to consider a change to the Planning Commission's recommendation, it is required to provide another opportunity for public comment before the City Council votes on the proposed change. Therefore, the Council may need to hold an additional public hearing on the Planning Commission's recommendations in the month of January, 2001. An extension of the moratorium until February 16, 2001 will accommodate this procedure and satisfy the public participation requirements of the Growth Management Act.

The above activities must be performed during a moratorium on the acceptance of non-exempt development permits, so that a property owner cannot vest to existing regulations, which may be substantially changed during this process. The courts have recognized that municipalities may need to adopt immediate moratoria without notice so that developers could not frustrate long-term planning by obtaining vested right to develop their property, thereby rendering new development regulations moot. Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995).

B. Testimony from Planning Associate. On November 13, 2000 and during the public hearing on and December 11, 2000, Patricia Iolavera, planning associate, testified as to the Planning Commission's progress in the development of the recommendation for the amendments to the

planned residential development and planned unit development chapters to the Gig Harbor Municipal Code. She described the changes made by City staff to the Planning Commission's recommendation, and the Planning Commission's decision on these changes after the Commission's meeting of November 18, 2000.

C. Council Deliberations. The City Council deliberated after the public testimony was provided. The Council voted to extend the moratorium until February 16, 2001, so that adequate public participation in the development regulation amendment process could be provided.

Section 3. Moratorium Continued. In light of the above, the City Council hereby continues the moratorium imposed on May 8, 2000, on the acceptance of all non-exempt development permit applications for property within the City, until February 16, 2001.

Section 4. Duration of the Moratorium. The moratorium continued by this Ordinance commenced on May 8, 2000, and shall terminate on February 16, 2001. The Council shall make the decision to terminate this moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or 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 6. Declaration of Emergency. The City Council hereby declares that this Ordinance shall take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without a continuation of the moratorium on the City's acceptance of non-exempt development applications

for property, such applications could become vested under regulations subject to imminent change by the City in its development regulation revision process. This Ordinance does not affect any vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permit and previously obtained approvals for development may proceed with processing or development, as the case may be.

Section 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect and be in full force immediately upon passage as set forth above.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 11th day of December, 2000.


CITY OF GIG HARBOR

  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By:   
MOLLY YOWSLEE, CITY CLERK

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By:   
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 12/6/00  
PASSED BY THE CITY COUNCIL: 12/11/00  
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EFFECTIVE DATE: 12/11/00  
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