

**ORDINANCE NO. 1349**

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO HEARING EXAMINER AUTHORITY AND APPEALS; REPEALING CHAPTER 17.10 OF THE GIG HARBOR MUNICIPAL CODE AND RECODIFYING IN A NEW CHAPTER 2.25, AS AMENDED; ADDING A NEW SECTION 19.05.011 TO THE GIG HARBOR MUNICIPAL CODE TO AUTHORIZE THE HEARING EXAMINER TO CLARIFY DECISIONS; AMENDING SECTION 19.16.080 TO REQUIRE A FEE FOR HEARING EXAMINER APPEALS OF NOTICES OF VIOLATION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, in 1996 the City of Gig Harbor created the Office of the Gig Harbor Hearing Examiner for the purposes of interpretation, review and implementation of land use regulations and other quasi-judicial functions as delegated by ordinance; and

WHEREAS, such provisions for the Hearing Examiner reside in the City's zoning code at chapter 17.10 of the Gig Harbor Municipal Code; and

WHEREAS, the Gig Harbor Hearing Examiner now makes administrative decisions relating to many non-land use related matters, and as such the City Council desires to move to the provisions establishing the Hearing Examiner into Title 2 - Administration and Personnel; and

WHEREAS, the City Council further desires to amend the appeals process to provide clarity in process, cost, and burdens of the parties at appeal hearings; and

WHEREAS, the Gig Harbor City Council held a public hearing on November 14<sup>th</sup>, 2016, to take public testimony relating to this ordinance; and

WHEREAS, no public testimony was provided at the public hearing; and

WHEREAS, the City Council has determined that adoption of the amendments set forth in this ordinance is in the best interests of the public;

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

**Section 1. Repeal.** Chapter 17.10 of the Gig Harbor Municipal Code is hereby repealed and recodified as Chapter 2.25 with amendments as follows:

Chapter 2.25  
HEARING EXAMINER

Sections:

- 2.25.010 Creation of hearing examiner system.
- 2.25.020 Appointment and term.
- 2.25.030 Qualifications.
- 2.25.040 Freedom from improper influence.
- 2.25.050 Conflict of interest.
- 2.25.060 Rules.
- 2.25.070 Powers.
- 2.25.080 Authority.

**2.25.010 Creation of hearing examiner system.**

The office of the Gig Harbor hearing examiner, hereinafter referred to as the examiner, is hereby created. The examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform other quasi-judicial functions as are delegated by ordinance. Unless the context requires otherwise, the term “examiner” as used in this chapter shall include deputy examiners and examiners pro tem.

**2.25.020 Appointment and term.**

The council shall appoint the examiner for a maximum term of ~~one~~ three years. The council may also appoint deputy examiners or examiners pro tem in the event of the examiner’s absence or inability to act. The city may terminate the agreement for hearing examiner services at any time with 30 days’ notice.

**2.25.030 Qualifications.**

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings and to discharge other delegated functions. Examiners shall hold no other elective or appointive office or position with city government.

**2.25.040 Freedom from improper influence.**

No person, including city officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him or her, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his or her duties in any other way; provided, that this section shall not prohibit the city attorney from rendering legal service to the examiner upon request.

**2.25.050 Conflict of interest.**

The examiner shall be subject to the same code of ethics as other appointed public officers in code cities, as set forth in RCW 35.42.020 and Chapter 42.23 RCW, as the same now exists or may hereafter be amended.

#### **2.25.060 Rules.**

The examiner city council shall ~~have the power to~~ prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of ~~his or her~~ the office of the hearing examiner.

#### **2.25.070 Powers.**

The examiner shall have the authority to:

- A. Receive and examine available information;
- B. Conduct public hearings in accordance with GHMC Title 19, Chapter 42.32 RCW and all other applicable law, and to prepare a record thereof;
- C. Administer oaths and affirmations;
- D. Issue subpoenas and examine witnesses; provided, that no person shall be compelled to divulge information which he or she could not be compelled to divulge in a court of law;
- E. Regulate the course of the hearing;
- F. Make and enter written findings of fact and conclusions to support his or her decisions;
- G. At the examiner's discretion, hold conferences for the ~~settlement or~~ simplification of the issues;
- H. Conduct discovery;
- I. Dispose of procedural requests or similar matters;
- J. Take official notice of matters of law or material facts;
- K. Issue summary orders in supplementary proceedings; and
- L. To dismiss an appeal or take other appropriate action when the examiner determines that he/she has no jurisdiction, the appeal is completely without merit, or where a party or representative fails to appear at a hearing; and
- ~~L. M.~~ Take any other action authorized by or necessary to carry out this chapter.

The above authority may be exercised on all matters for which jurisdiction is assigned to the examiner by city ordinance, code or other legal action of the city council. The nature of the examiner's decision shall be as specified in this chapter and in each ordinance or code which grants jurisdiction to the examiner.

#### **2.25.080 Authority.**

The examiner shall have the exclusive authority to hold public hearings and make recommendations and decisions on all applications, permits, ~~or~~ approvals, or appeals as described in Chapter 19.01 GHMC=provided for

in the GHMC. Unless otherwise specified in the GHMC, all appeals shall be governed by the process set forth in chapter 19.06 GHMC.

**Section 3. Section 19.05.011 - Added.** A new section 19.05.011 is hereby added to the Gig Harbor Municipal Code to read as follows:

**19.05.011 Clarification.**

Any person identified in GHMC 19.06.003 as having standing to file an administrative appeal may request at any time clarification of the decision. The hearing examiner shall have discretion to provide clarification. Such clarification shall not stay the effect of a decision or change or amend the conclusions of the decision.

**Section 4. Section 19.16.080 - Amended.** Subsection 19.16.080(A) of the Gig Harbor Municipal Code is hereby amended to read as follows:

**19.16.080 Notice of violation and civil penalty appeals.**

A. A person to whom a notice of violation or civil penalty is issued and served may appeal the notice of violation or civil penalty by filing a written request for appeal with the city clerk no later than 10 working days after said notice of violation or civil penalty is served. Each request for appeal shall contain the required appeal fee, the address and telephone number of the person making the request and the name and address of any person who may represent him or her. Each request for appeal shall set out the basis for the appeal. Failure to submit specific grounds for appeal in writing in the request may result in the dismissal of the appeal by the hearing examiner prior to any hearing.

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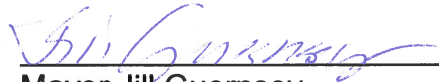
**Section 5. Authority to make necessary corrections.** The codifiers of this Ordinance are requested to update internal references from 17.10 to 2.25 as appropriate, and are authorized to make other necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**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 be published and shall take effect and be in full force five (5) days after the date of publication.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 28th day of November, 2016.

CITY OF GIG HARBOR

  
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Mayor Jill Guernsey

ATTEST/AUTHENTICATED:

  
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Molly M. Fowslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

  
\_\_\_\_\_  
Angela G. Summerfield

FILED WITH THE CITY CLERK: 11/09/16  
PASSED BY THE CITY COUNCIL: 11/28/16  
PUBLISHED: 12/01/16  
EFFECTIVE DATE: 12/06/16  
ORDINANCE NO: 1349