

ORDINANCE NO. 711

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING NEW ADMINISTRATIVE PROCEDURES FOR THE PROCESSING OF PROJECT PERMIT APPLICATIONS, AS REQUIRED BY THE REGULATORY REFORM ACT, CHAPTER 36.70B RCW, DESCRIBING GENERAL REQUIREMENTS FOR A COMPLETE APPLICATION; ALLOWING FOR OPTIONAL CONSOLIDATED PERMIT PROCESSING; DESCRIBING THE PROCESS FOR THE ISSUANCE OF A NOTICE OF APPLICATION; SETTING FORTH THE INITIAL STEPS IN THE DETERMINATION OF CONSISTENCY WITH THE DEVELOPMENT REGULATIONS AND SEPA SETTING A TIME FRAME FOR THE ISSUANCE OF PERMITS; DESCRIBING THE REQUIRED PUBLIC NOTICE PROCEDURES FOR A PUBLIC HEARING; ESTABLISHING THE PROCESS FOR THE CONDUCT OF OPEN PUBLIC RECORD DECISIONS AND APPEALS; DESCRIBING THE PROCESS FOR THE ISSUANCE OF A NOTICE OF DECISION AND ADDING A NEW TITLE 19 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Regulatory Reform Act (chapter 36.70B RCW) requires that the City must establish a permit review process which, among other things: (1) provides for the integrated and consolidated review and decision on two or more project permits relating to a proposed action; (2) combines the environmental review process, both procedural and substantive, with the procedure for the review of project permits; (3) provides for no more than one open record hearing and one closed record appeal on such permits, except for the appeal of a determination of significance; and (4) provides for the issuance of the City's final decision within 120 days after submission of a complete application; and

WHEREAS, the Act also requires that the City adopt such permit review process by March 31, 1996, but provides that the time frames for permit processing shall apply only to project permit applications filed on or after April 1, 1996; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO

ORDAIN AS FOLLOWS:

Section 1. A new Title 19 is hereby added to the Gig Harbor Municipal Code, to read as follows:

**TITLE 19
ADMINISTRATION OF DEVELOPMENT REGULATIONS**

**CHAPTER 19.01
TYPES OF PROJECT PERMIT APPLICATIONS**

19.01.001	Procedures for Processing Development Permits
19.01.002	Determination of Proper Type of Procedure
19.01.003	Project Permit Application Framework
19.01.004	Joint Public Hearings
19.01.005	Legislative Decisions
19.01.006	Legislative Enactments Not Restricted
19.01.007	Exclusions from Project Permit Process

19.01.001. Procedures for Processing Project Permits. For the purpose of project permit processing, all development permit applications shall be classified as one of the following: Type I, Type II, Type III or Type IV. Legislative decisions are Type V actions, and are addressed in 19.01.005. Exclusions from the requirements of project permit application processing are contained in Section 19.01.007.

19.01.002. Determination of Proper Procedure Type.

A. **Determination by Director.** The Director of the Community Development Department or his/her designee (hereinafter the "Director"), shall determine the proper procedure for all development applications. If there is a question as to the appropriate type of procedure, the Director shall resolve it in favor of the higher procedure type number.

B. **Optional Consolidated Permit Processing.** An application that involves two or more procedures may be processed collectively under the highest numbered procedure required for any part of the application or processed individually under each of the procedures identified by the code. The applicant may determine whether the application shall be processed collectively or individually. If the application is processed under the individual procedure option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure.

C. **Decision-maker(s).** Applications processed in accordance with subsection (B) of this section which have the same highest numbered procedure but are assigned different hearing bodies shall be heard collectively by the highest decision-maker(s). The City Council is the highest, followed by the Hearing Examiner or Planning Commission, as applicable, and then the Director. Joint public hearings with other agencies shall be processed according to Section 19.01.004.

19.01.003 Project Permit Application Framework.

ACTION TYPE

PROCEDURE PROJECT PERMIT APPLICATIONS (TYPE I - IV) LEGISLATIVE					
	TYPE I	TYPE II	TYPE III	TYPE IV	TYPE V
Recommendation made by:	N/A	N/A	N/A	N/A	Planning Commission
Final Decision made by:	Admin.	Admin.	Hearing Examiner	City Council	City Council
Notice of Application:	No	No	Yes	Yes	No
Open Record Public Hearing:	No	Only if appealed, open record hearing before Hearing Examiner	Yes, before Hearing Examiner to render final decision	No	Yes, before Planning Commission. to make re-commendation to Council
Closed record appeal/final decision:	No	No	Only if appealed, then before Council	Yes, before Council to render final decision	Yes, or Council could hold its own hearing
Judicial Appeal:	Yes	Yes	Yes	Yes	Yes

DECISIONS

TYPE I	TYPE II	TYPE III	TYPE IV	TYPE V
Permitted Uses not requiring site plan review	Short Plat	Preliminary plats; Plat vacations and alterations	Final plats	Comp Plan Amendments
Boundary line Adjustments	Sign permits	Site plan/binding site plan		Development Regulations
Minor Amendments to PUD/PRD	Design review	CUP/ General Variances, including sign permit variances		Zoning text amendments Zoning map amendments
Special Use Permits	Land clearing/grading	Shoreline Mgmt Permits		Annexations
Temporary construction trailers	Revisions to Shoreline Management Permits	PRD/PUD and major amendments to PRD and PUD		
	Administrative variances	Amendment to height restriction area map		
	Administrative interpretations	Mobile/manufactured home park or subdivision		
	Home occupation permit			
	Hardship variance, sign code			
	Modification to landscape plans			
	Minor amendment to PRD or PUD			

19.01.004 Joint Public Hearings.

A. **Administrator's Decision to Hold Joint Hearing.** The Director may combine any public hearing on a project permit application with any hearing that may be held by another local, state, regional, federal, or other agency, on the proposed action, as long as: (1) the hearing is held within the city limits; and (2) the requirements of subsection C below are met.

B. **Applicant's Request for a Joint Hearings.** The applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time

periods set forth in this Title. In the alternative, the applicant may agree to a particular schedule if that additional time is needed in order to complete the hearings.

C. **Prerequisites to Joint Public Hearing.** A joint public hearing may be held with another local, state, regional, federal or other agency and the City, as long as:

1. the other agency is not expressly prohibited by statute from doing so;
2. sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule; and
3. the agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing.
4. the hearing is held within the geographic boundary of the local government.

19.01.005 Legislative Decisions.

A. **Decisions.** The following decisions are legislative, and are not subject to the procedures in this title, unless otherwise specified:

1. Zoning code text, development regulations and zoning district amendments;
2. Area-wide rezones to implement new City policies;
3. Adoption of the Comprehensive Plan and any Plan amendments; and
4. Annexations.

B. **Planning Commission.** The Planning Commission shall hold a public hearing and make recommendations to the City Council on the decisions in this Section. The public hearing shall be held in accordance with the requirements of Chapter 19.05.

C. **City Council.** The City Council may consider the Planning Commission's recommendation in a public hearing held in accordance with the requirements of Chapter 19.05.

D. **Public Notice.** Notice of the public hearing or public meeting shall be provided to the public as set forth in Chapter 19.03.003(B)(4)

E. **Implementation.** The City Council's decision shall become effective by passage of an ordinance or resolution.

19.01.006. Legislative Enactments Not Restricted. Nothing in this chapter or the permit processing procedures shall limit the authority of the City Council to make changes to the City's Comprehensive Plan, as part of an annual revision process, or the City's development regulations.

19.01.007 Exemptions from Project Permit Application Processing.

A. Whenever a permit or approval in the Gig Harbor Municipal Code has been designated as a Type I, II, III or IV permit, the procedures in this Title shall be followed in project permit processing. The following permits or approvals are specifically excluded from the procedures set forth in this Title:

1. landmark designations;
2. street vacations;
3. street use permits;

B. Pursuant RCW 36.70B.140(2), building permits, boundary line adjustments or other construction permits, or similar administrative approvals categorically exempt from environmental review under SEPA (chapter 43.21C RCW and the City's SEPA/Environmental Policy Ordinance chapter 18.04 GHMC, or permits/approvals for which environmental review has been completed in connections with other project permits, are excluded from the following procedures:

Comment:
WHAT SECTIONS ARE BEING REFERRED TO?

1. determination of completeness (19.02.003(A));
2. notice of application (19.02.004);
3. except as provided in RCW 36.70B.140, optional consolidated project permit review processing (19.01.002(B));
4. joint public hearings (19.01.004);
5. single report stating that all of the decisions and recommendations made as of the date of the report do not require an open public record hearing (19.04.002(C));
6. notice of decision (19.05.008);
7. completion of project review within any applicable time periods (including the 120 day permit processing time) (19.05.008, 19.05.009);

**CHAPTER 19.02
TYPE I-IV PROJECT PERMIT APPLICATIONS**

19.02.001	Pre-Application Conference.
19.02.002	Development Permit Application.
19.02.003	Submission and Acceptance of Application.
19.02.004	Notice of Application.
19.02.005	Referral and Review of Development Permit Applications.

19.02.001. Pre-Application Conference.

A. Applications for project permit Type I actions involving structures 5,000 square feet or over, Type III and Type IV actions shall not be accepted by the Director unless the applicant has

Comment:
Note change in preapplication conference: applicant must request, but does not attend. It's for staff review only.

requested a pre-application conference. The purpose of the pre-application conference is to acquaint the applicant with the requirements of the Gig Harbor Municipal Code.

B. The conference shall be held within fifteen (15) days of the request.

C. Within five (5) working days following the conference, the Director shall provide the applicant with:

1. a form which lists the requirements for a completed application;
2. a general summary of the procedures to be used to process the application;
3. the references to the relevant code provisions or development standards which may apply to the approval of the application.
4. the City's design guidelines.

D. It is impossible for the conference to be an exhaustive review of all potential issues. The discussions at the conference or the form sent by the City to the applicant under 19.02.001(C) above shall not bind or prohibit the City's future application or enforcement of all applicable law.

E. Pre-application conferences for all other types of applications is optional, and requests for conferences will be considered on a time-available basis by the Director.

19.02.002. Development Permit Application. Applications for project permits shall be submitted upon forms provided by the Director. An application shall consist of all materials required by the applicable development regulations, and shall include the following general information:

A. A completed project permit application form.

B. A verified statement by the applicant that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has submitted the application with the consent of all owners of the affected property.

C. A property and/or legal description of the site for all applications, as required by the applicable development regulations.

D. The applicable fee.

F. Evidence of adequate water supply as required by RCW 19.27.097.

G. Evidence of sewer availability.

19.02.003. Submission and Acceptance of Application.

A. **Determination of Completeness.** Within twenty-eight (28) days after receiving a project permit application, the City shall mail or personally provide a determination to the applicant which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete.

B. **Identification of Other Agencies with Jurisdiction.** To the extent known by the City, other agencies with jurisdiction over the project permit application shall be identified in the City's determination required by 19.02.003(A) above.

C. **Additional Information.** A project permit application is complete for purposes of this section when it meets the submission requirements in Section 19.02.002 above, as well as the submission requirements contained in the applicable development regulations. This determination of completeness shall be made when the application is sufficient for continued processing even though additional information may be required or project modifications may be undertaken subsequently. The City's determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposed action.

D. **Incomplete application procedure.**

1. If the applicant receives a determination from the City that an application is not complete, the applicant shall have 90 days to submit the necessary information to the City. Within fourteen (14) days after an applicant has submitted the requested additional information, the City shall make the determination as described in 19.02.003(A). above, and notify the applicant in the same manner.

2. If the applicant either refuses in writing to submit additional information or does not submit the required information within the 90 day period, the Director shall make findings and issue a decision, according to the Type I procedure in Section 19.01.003, that the application is lapsed, based upon the lack of information necessary to complete the review.

3. In those situations where the Director has made a determination that an application has lapsed because the applicant has failed to submit the required information within the necessary time period, the applicant may request a refund of the application fee unrelated to the City's determination of completeness.

E. **City's Failure to Provide Determination of Completeness.** A project permit application shall be deemed complete under this section if the City does not provide a written determination to the applicant that the application is incomplete as provided in 19.02.003(A) above.

F. **Date of Acceptance of Application.** When the project permit application is complete, the Director shall accept it and note the date of acceptance.

19.02.004. Notice of Application.

A. **Generally.** A Notice of Application shall issue on all Type III and IV project permit applications.

B. **SEPA Exempt projects.** A notice of application shall not be required for project permits that are categorically exempt under SEPA, unless a public comment period or an open record predecision hearing is required.

C. **Contents.** The notice of application shall include:

1. the date of application, the date of the notice of completion for the application and the date of the notice of application;

2. a description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70A.440.

3. the identification of other permits not included in the application, to the extent known by the City;

4. the identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;

5. a statement of the limits of the public comment period, which shall be not less than fourteen (14) nor more than thirty (30) days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;

6. the date, time, place and type of hearing, if applicable and scheduled at the date of notice of the application;

7. a statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and of consistency as provided in Chapter 19.04;

8. Any other information determined appropriate by the City, such as the City's threshold determination, if complete at the time of issuance of the notice of application.

D. **Time Frame for Issuance of Notice of Application.**

1. Within fourteen (14) days after the City has made a determination of completeness of a project permit application, the City shall issue a notice of application.

2. If any open record predecision hearing is required for the requested project permit(s), the notice of application shall be provided at least fifteen (15) days prior to the open record hearing.

E. **Public Comment on the Notice of Application.** All public comments received on the Notice of Application must be received in the Department of Planning and Building by 5:00 p.m. on the last day of the comment period. Comments may be mailed, personally delivered or sent by facsimile. Comments should be as specific as possible.

19.02.005. Referral and Review of Project Permit Applications. Within ten (10) days of accepting a complete application, the Director shall do the following:

A. Transmit a copy of the application, or appropriate parts of the application, to each affected agency and city department for review and comment, including those responsible for determining compliance with state and federal requirements. The affected agencies and city departments shall have fifteen (15) days to comment. The referral agency or city department is presumed to have no comments if comments are not received within the specified time period. The Director shall grant an extension of time only if the application involves unusual circumstances. Any extension shall only be for a maximum of three (3) additional days.

B. If a Type III procedure is required, provide for notice and hearing as set forth in Chapter 19.03.

CHAPTER 19.03 PUBLIC NOTICE

- 19.03.001 Required Public Notice of Application.
- 19.03.002 Optional Public Notice.
- 19.03.003 Notice of Public Hearing.

19.03.001 Required Public Notice of Application.

A. In addition to the Notice of Application for Type III project permits, the City shall also provide public notice of a project permit application by posting the property or by publication in the City's official newspaper.

1. **Posting.** Posting of the property for site specific proposals shall consist of one or more notice boards as follows:

a. A single notice board shall be placed by the applicant;

(1) at the midpoint of the site street frontage or as otherwise directed by the City for maximum visibility;

(2) Five (5) feet inside the street property line, except when the board is structurally attached to an existing building, provided that no notice board shall be placed more than five feet from the street property without approval of the Department;

above grade; and (3) So that the top of the notice board is between seven to nine feet

(4) Where it is completely visible to pedestrians.

b. Additional notice boards may be required when:

(1) The site does not abut a public road;

(2) A large site abuts more than one public road; or

(3) The Director determines that additional notice boards are necessary to provide adequate public notice.

c. Notice boards shall be:

(1) Maintained in good condition by the applicant during the notice period;

(2) In place at least thirty (30) days prior to the date of hearing, or at least 15 days prior to the end of any required comment period;

(3) Removed within fifteen (15) days after the end of the notice period.

d. Removal of the notice board prior to the end of the notice period may be cause for discontinuance of the Department review until the notice board is replaced and remains in place for the specified time period.

e. An affidavit of posting shall be submitted to the Director by the applicant prior to the hearing or final comment date. If the affidavits are not filed as required, any scheduled hearing or date by which the public may comment on the application, will be postponed in order to allow compliance with this notice requirement.

f. Notice boards shall be constructed and installed in accordance with specifications promulgated by the Department of Community Development.

2. **Published Notice.** Published notice shall include at least the project location, description, type of permit(s) required, comment period dates, and location where the complete application may be reviewed, in the City's official newspaper of general circulation in the general area where the proposal is located.

3. **Shoreline Master Program Permits.**

a. **Methods of Providing SMP Notice.** Notice of the application of a permit under the purview of the City's Shoreline Master Program (SMP) is given by at least one of the following methods:

i. mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least 300 feet of the boundary of the property upon which the substantial development is proposed;

ii. posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

iii. any other manner deemed appropriate by the City to accomplish the objectives of reasonable notice to adjacent landowners and the public.

b. **Content of SMP Notice.** The notices shall include:

i. a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after issuance of the decision, may submit the comments or requests for decisions to the City within 30 days of the last date the notice is to be published pursuant to this subsection. The City shall forward, in a timely manner following issuance of the decision, a copy of the decision to each person who submits a request for the decision.

ii. Notice of the hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

iii. The public comment period shall be twenty days. The notice shall state the manner in which the public may obtain a copy of the City's decision on the application no later than 2 days following its issuance.

19.03.002 Optional Public Notice. As optional methods of providing public notice of any project permits, the City may:

1. notify the public or private groups with known interest in a certain proposal or in the type of proposal being considered;

2. notifying the news media;

3. placing notices in appropriate regional or neighborhood newspapers or trade journals;

4. publishing notice in agency newsletters or sending notice to agency mailing lists, either general lists or lists for specific proposals or subject areas; and

5. mailing to neighboring property owners.

The City's failure to provide the optional notice as described in this subsection shall not be grounds for invalidation of any permit decision.

19.03.003. Notice of Public Hearing.

A. **Content of Notice of Public Hearing for all Types of Applications.** The notice given of a public hearing required in this chapter shall contain:

1. the name and address of the applicant or the applicant's representative;
2. description of the affected property, which may be in the form of either a vicinity location or written description, other than a legal description;
3. the date, time and place of the hearing;
4. a description of the subject property reasonably sufficient to inform the public of its location, including but not limited to the use of a map or postal address and a subdivision lot and block designation.
5. the nature of the proposed use or development;
6. a statement that all interested persons may appear and provide testimony;
7. the sections of the code that are pertinent to the hearing procedure;
8. when information may be examined, and when and how written comments addressing findings required for a decision by the hearing body may be admitted;
9. the name of a local government representative to contact and the telephone number where additional information may be obtained;
10. that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at the City's cost;
11. that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and copies will be provided at the City's cost;

B. **Mailed Notice.** Mailed notice of the public hearing shall be provided as follows:

1. **Type I, Type II, and Type IV Actions.** No public notice is required because no public hearing is held, except on an appeal of a Type II action.

2. **Type III Actions.** The notice of public hearing shall be mailed to:

- a. the applicant;
- b. all owners of property within 300 feet of the subject property;
- c. any person who submits written or oral comments on an application.

3. **Type III Preliminary Plat Actions.** In addition to the notice for Type III actions above for preliminary plats and proposed subdivisions, additional notice shall be provided as follows:

a. Notice of the filing of a preliminary plat adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities.

b. Notice of the filing of a preliminary plat of a proposed subdivisions located in a city or town and adjoining the municipal boundaries thereof shall be given to the appropriate county officials.

c. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation, who must respond within 15 days of such notice.

d. Special notice of the hearing shall be given to adjacent landowners by any other reasonable method the City deems necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within 300 feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under subsection RCW 58.17.909(1)(b) shall be given to owners of real property located within 300 feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided.

4. **Type V Actions.** For Type V Legislative actions, the City shall publish notice as described in Section 19.03.003(D)(2) herein, and all other notice required by RCW 35A.12.160.

5. **General Procedure for Mailed Notice of Public Hearing.**

1. The records of the Pierce County Assessor's Office shall be used for determining the property owner of record. Addresses for a mailed notice required by this code shall be obtained from the applicable county's real property tax records. The Director shall issue a sworn certificate of

mailing to all persons entitled to notice under this chapter. The Director may provide notice to other persons that those required to receive notice under the code.

2. All public notices shall be deemed to have been provided or received on the date the notice is deposited in the mail or personally delivered, whichever occurs first.

D. Procedure for Posted or Published Notice of Public Hearing.

1. Posted notice of the public hearing is required for all Type III and IV project permit applications. The posted notice shall be posted as required by Section 19.03.001(A)(1).

2. Published notice is required for all Type III, IV and V procedures. The published notice shall be published in the City's official newspaper.

E. Time and Cost of Notice of Public Hearing.

1. Notice shall be mailed, posted and first published not less than ten (10) nor more than thirty (30) days prior to the hearing date. Any posted notice shall be removed by the applicant within fifteen (15) days following the public hearing.

2. All costs associated with the public notice shall be borne by the applicant.

**CHAPTER 19.04
CONSISTENCY WITH DEVELOPMENT REGULATIONS
AND SEPA**

Comment:
This section needs to be expanded per advise of legal.

19.04.001	Determination of Consistency
19.04.002	Initial SEPA Analysis
19.04.003	Categorically Exempt and Planned Actions

19.04.001. Determination of Consistency.

A. **Purpose.** When the City receives a project permit application, consistency between the proposed project and the applicable regulations and comprehensive plan should be determined through the process in this chapter and the City's adopted SEPA ordinance Chapter 18.04 GHMC.

B. **Consistency.** During project permit application review, the City shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, the City shall determine whether the items listed in this subsection are defined in the City's adopted comprehensive plan. This determination of consistency shall include the following:

1. the type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;

2. the level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density; and
3. availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by chapter 36.70A RCW; and
4. character of the development, such as development standards;

19.04.002 Initial SEPA Analysis.

A. The City shall also review the project permit application under the requirements of the State Environmental Policy Act ("SEPA"), Chapter 43.21C RCW, the SEPA Rules, Chapter 197-11 WAC, and the City Environmental Policy Ordinance, Chapter 18.04 of the Gig Harbor Municipal Code, and shall:

1. determine whether the applicable regulations require studies that adequately analyze all of the project permit application's specific probable adverse environmental impacts;
2. determine if the applicable regulations require measures that adequately address such environmental impacts;
3. determine whether additional studies are required and/or whether the project permit application should be conditioned with additional mitigation measures;
4. provide prompt and coordinated review by government agencies and the public on compliance with applicable environmental laws and plans, including mitigation for specific project impacts that have not been considered and addressed at the plan or development regulation level.

B. In its review of a project permit application, the City may determine that the requirements for environmental analysis, protection and mitigation measures in the applicable development regulations, comprehensive plan and/or in other applicable local, state or federal laws provide adequate analysis of and mitigation for the specific adverse environmental impacts of the application.

C. If the City bases or conditions its approval of the project permit application on compliance with the requirements or mitigation measures described in subsection A of this section, the City shall not impose additional mitigation under SEPA during project review.

D. A comprehensive plan, development regulation or other applicable local, state or federal law provides adequate analysis of and mitigation for the specific adverse environmental impacts of an application when:

1. the impacts have been avoided or otherwise mitigated; or

2. the City has designated as acceptable certain levels of service, land use designations, development standards or other land use planning required or allowed by chapter 36.70A RCW.

E. In its decision whether a specific adverse environmental impact has been addressed by an existing rule or law of another agency with jurisdiction with environmental expertise with regard to a specific environmental impact, the City shall consult orally or in writing with that agency and may expressly defer to that agency. In making this deferral, the City shall base or condition its project approval on compliance with these other existing rules or laws.

F. Nothing in this section limits the authority of the City in its review or mitigation of a project to adopt or otherwise rely on environmental analyses and requirements under other laws, as provided by chapter 43.21C RCW.

G. The City shall also review the application under chapter 18.04, the City Environmental Policy Ordinance.

19.04.003. Categorically Exempt and Planned Actions.

A. **Categorically Exempt.** Actions categorically exempt under chapter 43.21C.110(1)(a) do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the rules adopted by the Department of Ecology (chapter 197-11 WAC) may not be conditioned or denied under SEPA.

B. Planned Actions.

1. A Planned Action does not require a threshold determination or the preparation of an environmental impact statement under SEPA, but is subject to environmental review and mitigation under SEPA.

2. A "Planned Action" means one or more types of project action that:

a. are designated planned actions by an ordinance or resolution adopted by the City;

b. have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:

1) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or

2) a fully contained community, a master planned resort, a master planned development or a phased project;

- of this subsection;
- c. are subsequent or implementing projects for the proposals listed in 2(b.)
 - d. are located within an urban growth area, as defined in RCW 36.70A.030;
 - e. are not essential public facilities, as defined in RCW 36.70A.200; and
 - f. are consistent with the City's comprehensive plan adopted under chapter 36.70A RCW.

C. **Limitations on Planned Actions.** The City shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the City, and may limit a planned action to a time period identified in the environmental impact statement or the adoption of this ordinance.

D. During project review, the City shall not reexamine alternatives to or hear appeals on the items identified in 19.04.001(B), except for issues of code interpretation.

E. Project review shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.

CHAPTER 19.05 OPEN RECORD PUBLIC HEARINGS

19.05.001	General.
19.05.002	Responsibility of Director for Hearing.
19.05.003	Conflict of Interest
19.05.004	Ex Parte Communications
19.05.005	Disqualification
19.05.006	Burden of Proof
19.05.007	Order of Proceedings
19.05.008	Findings and Notice of Decision
19.05.009	Record of Proceedings

19.05.001. General. Public hearings on all Type II, III and V project permit applications, shall be conducted in accordance with this chapter.

19.05.002 Responsibility of Director for Hearing. The Director shall:

- A. Schedule an application for review and public hearing.
- B. Give notice.

C. Prepare the staff report on the application, which shall be a single report stating all of the decisions made as of the date of the report, including recommendations on project permits in the consolidated permit process that do not require an open record predecision hearing. The report shall state any mitigation required or proposed under the development regulations or the City's authority under SEPA. If the threshold determination other than a determination of significance has not been issued previously by the City, the report shall include or append this determination. In the case of a Type I or II project permit application, this report may be the permit.

D. Prepare the Notice of Decision, if required by the Hearing Body and/or mail a copy of the Notice of Decision to those required by this code to receive such decision.

19.05.003 Conflict of Interest. The Hearing Body shall be subject to the code of ethics and prohibitions on conflict of interest as set forth in RCW 35A.42.020 and chapter 42.23 RCW, as the same now exists or may hereafter be amended.

19.05.004 Ex Parte Communications.

A. No member of the Hearing Body may communicate, directly or indirectly, regarding any issue in a proceeding before him or her, other than to participate in communications necessary to procedural aspects of maintaining an orderly process, unless he or she provides notice and opportunity for all parties to participate; EXCEPT as provided in this section;

1. the Hearing Body may receive advice from legal counsel;

2. the Hearing Body may communicate with staff members (except where the proceeding relates to a code enforcement investigation or prosecution).

B. If, before serving as the Hearing Body in a quasi-judicial proceeding, any member of the Hearing Body receives an ex parte communication of a type that could not properly be received while serving, the member of the hearing body, promptly after starting to serve, shall disclose the communication as described in 19.05.004(C). below.

C. If the Hearing Body receives an ex parte communication in violation of this section, he or she shall place on the record:

1. all written communications received;

2. all written responses to the communications;

3. the substance of all oral communications received, and all responses made;

4. the identity of each person from whom the examiner received any ex parte communication.

The Hearing Body shall advise all parties that these matters have been placed on the record. Upon request made after notice of the ex parte communication, any party desiring to rebut the communication shall be allowed to place a rebuttal statement on the record.

19.05.005 Disqualification.

A. A member of the Hearing Body who is disqualified shall be counted for purposes of forming a quorum. Any member who is disqualified may do so only by making full disclosure to the audience, abstaining from voting on the proposal, vacating the seat on the Hearing Body and physically leaving the hearing.

B. If all members of the Hearing Body are disqualified, all members present after stating their reasons for disqualification shall be requalified and shall proceed to resolve the issues.

C. Except for Type V actions, a member absent during the presentation of evidence in a hearing may not participate in the deliberations or decision unless the member has reviewed the evidence received.

19.05.006 Burden and Nature of Proof.

Except for Type V actions, the burden of proof is on the proponent. The project permit application must be supported by proof that it conforms to the applicable elements of the City's development regulations, comprehensive plan and that any significant adverse environmental impacts have been adequately addressed.

19.05.007 Order of Proceedings.

A. The order of proceedings for a hearing will depend in part on the nature of the hearing. The following shall be supplemented by administrative procedures as appropriate.

1. Before receiving information on the issue, the following shall be determined:

a. any objections on jurisdictional grounds shall be noted on the record and if there is objection, the hearing body has the discretion to proceed or terminate.

b. any abstentions or disqualifications shall be determined.

2. The presiding officer may take official notice of known information related to the issue, such as:

a. a provision of any ordinance, resolution, rule, officially adopted development standard or state law;

b. other public records and facts judicially noticeable by law.

3. Matters officially noticed need not be established by evidence and may be considered by the Hearing Body in its determination. Parties requesting notice shall do so on the record. However, the hearing body may take notice of matters listed in subsection (2) of this section if stated for the record. Any matter given official notice may be rebutted.

4. The Hearing Body may view the area in dispute with or without notification to the parties, but shall place the time, manner and circumstances of such view on the record.

5. Information shall be received from the staff and from proponents and opponents. The presiding officer may approve or deny a request from a person attending the hearing to ask a question. Unless the presiding officer specifies otherwise, if the request to ask a question is approved, the presiding officer will direct the question to the person submitting testimony.

6. When the presiding officer has closed the public hearing portion of the hearing, the Hearing Body shall openly discuss the issue and may further question a person submitting information or the staff if opportunity for rebuttal is provided.

19.05.008. Decision.

A. Following the hearing procedure described in Section 19.04.007, the Hearing Body shall approve, conditionally approve, or deny the application. If the hearing is an appeal, the hearing body shall affirm, reverse or remand the decision that is on appeal.

B. The Hearing Body's written decision shall issue within ten (10) days after the hearing on the project permit application. The Notice of Final Decision shall issue within one hundred twenty (120) days after the City notifies the applicant that the application is complete. The time frames set forth in this Section and Section 19.04.009 shall apply to project permit applications filed on or after April 1, 1996.

C. The City shall provide a Notice of Decision that also includes a statement of any threshold determination made under SEPA (chapter 43.21C RCW) and the procedures for administrative appeal, if any. For Type II, III and IV project permits, the Notice of Decision on the issued permit shall contain the requirements set forth in Section 19.04.002(C).

D. The Notice of Decision shall be provided to the applicant and to any person who, prior to the rendering of the decision, requested notice of the decision or submitted substantive comments on the application.

E. Notice of the decision shall be provided to the public as set forth in Section 19.03.003(B)(2)(a) and (B)(2)(c).

F. If the City is unable to issue its final decision on a project permit application within the time limits provided for in this section, it shall provide written notice of this fact to the project

applicant. The notice shall include a statement of reasons why the time limits have not been met and an estimated date for issuance of the Notice of Decision.

19.05.009 Calculation of Time Periods for Issuance of Notice of Final Decision.

A. In determining the number of days that have elapsed after the local government has notified the applicant that the application is complete for purposes of calculating the time for issuance of the Notice of Final Decision, the following periods shall be excluded:

1. any period during which the applicant has been requested by the City to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the City notifies the applicant of the need for additional information until the earlier of the date the local government determines whether the additional information satisfies the request for information or fourteen (14) days after the date the information has been provided to the City;

2. If the City determines that the information submitted by the applicant under Section 19.04.009(A)(1) is insufficient, it shall notify the applicant of the deficiencies and the procedures under Section 19.04.009(A)(1) of this subsection shall apply as if a new request for studies had been made;

3. Any period during which an environmental impact statement is being prepared following a determination of significance pursuant of chapter 43.21C RCW, if the City by ordinance has established time periods for completion of environmental impact statements, or if the local government and the applicant in writing agree to a time period for completion of an environmental impact statement;

4. Any period for administrative appeals of project permits, if an open record appeal hearing or a closed record appeal, or both, are allowed. The time period for consideration and decision on appeals shall not exceed:

- a. ninety (90) days for an open record appeal hearing; and
- b. sixty (60) days for a closed record appeal.

The parties may agree to extend these time periods;

5. Any extension of time mutually agreed upon by the applicant and the local government; and

B. The time limits established in this Title do not apply if a project permit application:

- 1. requires an amendment to the comprehensive plan or a development regulation;

2. requires approval of the siting of an essential public facility as provided in RCW 36.70A.200; or

3. is substantially revised by the applicant, in which case the time period shall start from the date at which the revised project application is determined to be complete under RCW 36.70A.440.

**CHAPTER 19.06
CLOSED RECORD MEETINGS
AND APPEALS**

- 19.06.001 Appeals of Administrative Decisions
- 19.06.002 Consolidated Appeals
- 19.06.003 Standing to Initiate Administrative Appeal
- 19.06.004 Closed Record Decisions and Appeals
- 19.06.005 Procedure for Closed Record Decisions and Appeals
- 19.06.006 Judicial Appeals

19.06.001. Appeals of Decisions. Project permit applications shall be appealable as provided in the framework in Section 19.01.003.

19.06.002 Consolidated Appeals.

A. All appeals of project permit application decisions, other than an appeal of Determination of Significance ("DS"), shall be considered together in a consolidated appeal.

B. Appeals of environmental determinations under SEPA, chapter 18.04 GHMC, shall proceed as provided in that chapter.

19.06.003 Standing to Initiate Administrative Appeal.

A. **Limited to Parties of Record.** Only parties of record may initiate an administrative appeal of a Type II or III decision on a project permit application.

B. **Definition.** The term "parties of record" for the purposes of this chapter, shall mean:

- 1. the applicant;
- 2. any person who testified at the open record public hearing on the application

and/or;

3. any person who submitted written comments concerning the application at the open record public hearing (excluding persons who have only signed petitions or mechanically produced form letters).

19.06.004 Closed Record Decisions and Appeals.

A. **Type II or III project permit decisions or recommendation.** Appeals of the Hearing Body's decision or recommendation on a Type II or III project permit application shall be governed by the following:

1. Standing. Only parties of record have standing to appeal the Hearing Body's decision.
2. Time to File. An appeal of the Hearing Body's decision must be filed within fourteen (14) calendar days following issuance of the Hearing Body's written decision. Appeals may be delivered to the Planning Department by mail, personal delivery or by fax before 5:00 p.m. on the last business day of the appeal period.
3. Computation of Time. For the purposes of computing the time for filing an appeal, the day the Hearing Body's decision is rendered shall not be included. The last day of the appeal period shall be included unless it is a Saturday, Sunday, a day designated by RCW 1.16.050 or by the City's ordinances as a legal holiday, then it also is excluded and the filing must be completed on the next business day. (RCW 35A.21.080.)
4. Content of Appeal. Appeals shall be in writing, be accompanied by an appeal fee, and contain the following information:
 - a. appellant's name, address and phone number;
 - b. appellant's statement describing his or her standing to appeal;
 - c. identification of the application which is the subject of the appeal;
 - d. appellant's statement of grounds for appeal and the facts upon which the appeal is based;
 - e. the relief sought, including the specific nature and extent;
 - f. a statement that the appellant has read the appeal and believes the contents to be true, following by the appellant's signature.
5. Effect. The timely filing of an appeal shall stay the effective date of the Hearing Body's decision until such time as the appeal is adjudicated by the Council or withdrawn.
6. Notice of Appeal. The Director shall provide public notice of the appeal as provided in Section 19.03.003(B)(2).

19.06.005 Procedure for Closed Record Decision/Appeal.

A. The following subsections of this Title shall apply to a Closed Record Decision/Appeal hearing: 19.04.003; 19.04.004; 19.04.005; 19.04.006; 19.04.007(A)(1); 19.04.007(A)(2), 19.04.007(A)(3), 19.04.007(A)(4), 19.04.007(A)(6); and 19.04.008.

B. The closed record appeal/decision hearing shall be on the record before the Hearing Body, and no new evidence may be presented.

19.06.006 Judicial Appeals.

A. The City's final decision on an application may be appealed by a party of record with standing to file a land use petition in Pierce County Superior Court. Such petition must be filed within twenty-one (21) days after issuance of the decision, as provided in chapter 36.70C RCW.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be 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 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect on **April 1, 1996**, after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

CITY CLERK, MARK HOPPEN

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL: 1/8/96
PUBLISHED: 1/31/96
EFFECTIVE DATE: 2/5/96
ORDINANCE NO. 711