

ORDINANCE NO. 726

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO WETLANDS MANAGEMENT, CORRECTING CHAPTER 18.08 OF THE Gig Harbor Municipal Code TO REFLECT PRIOR AMENDMENTS AND UPDATING THE ORDINANCE FOR CONFORMANCE WITH THE REGULATORY REFORM ACT, CHAPTER 36.70B RCW, AND TITLE 19 OF THE GIG HARBOR MUNICIPAL CODE; AMENDING SECTIONS 18.08.030; 18.08.040; 18.08.060; 18.08.070; 18.08.100; 18.08.140; 18.08.170; 18.08.200; 18.08.220; REPEALING SECTIONS 18.08.190, 18.08.250.

WHEREAS, the City is updating its environmental codes to provide continuity and consistency with the Regulatory Reform Act (RCW 36.70B) and newly adopted Title 19 of the Gig Harbor Municipal Code; and,

WHEREAS, Chapter 18.08 (Wetland Management Regulations) was amended in 1991 to reflect changes in city policy regarding wetland classifications; and,

WHEREAS, further housekeeping changes are needed to accurately reflect the previous change in the wetlands classification system; and,

WHEREAS, changes are required to reflect new administrative procedures for enforcement and permit processing.

THE CITY COUNCIL OF THE CITY OF GIG HARBOR DO ORDAIN AS FOLLOWS:

Section 1. Section 18.08.030 is hereby amended to read as follows:

GG. "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, retention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. ~~However,~~ Wetlands include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

Section 2. Section 18.08.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

18.08.040 Wetland classification guidelines/ ratings.

A wetland rating and classification shall be established based upon the completion of a delineation report prepared by a wetland specialist to determine boundary, size, function and value. Guidelines for preparing a wetland delineation report are defined in Gig Harbor Municipal Code 18.08.070 and the 1987 Federal Manual for Identifying and Delineating Jurisdictional Wetlands, ~~as now or hereafter amended~~ in use as of January 1, 1995 by the U.S. Army Corps of Engineers.

A. Wetlands shall be classified as Category I, II, III, and IV ~~and V~~, in accordance with the following criteria:

1. Category I.

~~a. Documented habitat for endangered or threatened plant, fish or animal species or for potentially extirpated plant species recognized by state or federal agencies, or~~

~~b. High quality native wetland communities, including documented Category I or II quality natural heritage wetland sites and sites which qualify as a Category I or II quality natural heritage wetland, or~~

~~c. High quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps; or~~

1.2. Category II I.

~~a. Regulated wetlands that do not contain features outlined in Category I, and~~

~~a.b. Documented habitats for sensitive plant, fish or animal species recognized by federal or state agencies, or~~

~~b.e. Regionally rare wetland communities which are not high quality, but which have irreplaceable ecological functions, including sphagnum bogs and fens, estuarine wetlands, or mature forested swamps, or~~

~~c.d. Wetland types with significant functions which may not be adequately replicated through creation or restoration. These wetlands may be demonstrated by the following characteristics:~~

~~i. Significant peat systems, or;~~

~~ii. Forested swamps that have three canopy layers, excluding monotypic stands of red alder averaging eight inches diameter or less at breast height, or;~~

~~iii. Significant spring fed systems, or~~

~~d.e. Wetlands with significant habitat value based on diversity and size, including wetlands which are:~~

~~i. Ten acres or greater in size; and two or more wetland classes together with open water at any time during a normal year, or~~

ii. Ten acres or greater in size; and three or more wetland classes; and five or more subclasses of vegetation in a dispersed pattern, or
iii. Five acres or greater in size; and 40 to 60 percent open water at any time during a normal year; and two or more subclasses of vegetation in a dispersed pattern, or
e.f. Regulated wetlands which are contiguous with both year-round and intermittent salmonid fish-bearing waters, or
f.g. Wetlands with significant use by fish and wildlife.

~~2.3.~~ Category III. Regulated wetlands that do not contain features outlined in Category I or II or III.

~~3.4.~~ Category III.

a. Regulated wetlands which do not meet the criteria of a Category I or II wetland and which are greater than 10,000 square feet in area; and

b. Hydrologically isolated wetlands that are greater than 10,000 square feet but less than or equal to one acre in size, and have only one wetland class, and have only one dominant plant species (monotypic vegetation).

c. Hydrologically isolated wetlands less than 10,000 square feet in area which contain a rare or unique species or which have significant biological function and value.

~~4.5.~~ Category IV Criteria.

a. All streams designated as Type 3 - 5 waters by the Department of Natural Resources, Forest Practices Rules and Regulations pursuant to WAC 222-16-020 and 222-16-030.

Section 3. Section 18.08.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

18.08.060 Exemptions.

The following activities shall be exempt from the provisions of this chapter:

C. Activities affecting a hydrologically isolated wetland, if the functional wetland size is less than 2,500 square feet, except that such activities shall comply with the city flood hazard construction code and the city storm drainage management plan;

Section Section 18.08.070 of the Gig Harbor Municipal Code is hereby amended to read as follows:

B. Permit Requirements. No separate application or permit is required to conduct regulated activities within a wetland or its associated buffer. Review of regulated activities within a wetland and buffers is subject to the permit processing procedure for the required

permit type as defined under Title 19 of the Gig Harbor Municipal Code. The department shall utilize existing environmental review procedures, city SEPA Ordinance, Chapter 18.04 Gig Harbor Municipal Code, to assess impacts to wetlands and impose required mitigation. Department review of proposed alterations to wetlands and buffer areas and a mitigation plan may be required prior to issuance of a SEPA determination by the city's responsible official.

D. Prior to submittal of a wetland delineation report, recommendation on wetland category, proposed alterations to wetlands and buffer areas, or mitigation plan, the ~~department applicant may require request~~ department applicant may require request a pre-filing conference ~~with the applicant in accordance with the procedures established in Section 19.02.001.~~ with the applicant in accordance with the procedures established in Section 19.02.001. ~~The purpose of the conference is to determine the materials which must be submitted, timing of submittals and to provide additional information.~~

E. Request for Official Determination. A request for an official determination of whether a proposed use or activity at a site is subject to this chapter must be in writing and made to the city office of community development. The request can be accompanied by a SEPA environmental checklist. The request shall contain plans, data and other information in sufficient detail to allow for determination, including a wetland delineation report. The applicant shall be responsible for providing plans and the wetland delineation report to the department. ~~Upon review of the submitted material and within 45 days of submittal, the department shall request any additional information it determines necessary to properly evaluate the wetland delineation, functions and values, proposed mitigation and other information related to wetlands associated with the proposal.~~

F. A wetland analysis report shall be submitted to the department for review of a proposal for activity which lies within a wetland, or within 150 feet of a wetland. The purpose of the wetland analysis report is to determine the extent and function of wetlands to be impacted by the proposal. This analysis and report may be waived for Category IV wetlands if the proposed activity includes the required minimum streamside buffer as established under Section 18.08.100.

I. If alteration of a wetland or buffer is proposed, a wetland mitigation plan shall be ~~required to be~~ submitted pursuant to requirements of this chapter, subsequent to staff review of the wetland analysis report. In no event will a mitigation plan be required prior to a determination of whether a designated wetland is present on a site.

Section 4. Section 18.08.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

A. Following the department's determination of the category for a wetland associated with a proposal, the department shall determine appropriate buffer widths. Wetland buffer zones shall be evaluated for all development proposals and activities adjacent to wetlands to determine their need to protect the integrity, functions and values of the wetland. All wetland buffer zones are measured perpendicular from the wetland edge as marked in the field. Except as otherwise permitted by this chapter, they shall consist of an undisturbed area of native vegetation and existing non-native vegetation. The following ~~maximum~~ buffer widths are required:

<u>Wetland Category</u>	<u>Buffer Width</u>
Category I	100 feet
Category II	50 feet
Category III	25 feet
Category IV	Type 3 water: 35 feet
(as measured from ordinary high water)	Type 4 water: 25 feet
	Type 5 water: 15 feet

Section 5. Section 18.08.140 of the Gig Harbor Municipal Code is hereby amended to read as follows:

A. Alteration of Category II, III and IV ~~and V~~ wetlands may be allowed when all significant adverse impacts to wetland functions and values can be shown to be fully mitigated. Criteria to be considered by the applicant or the property owner are:

1. Avoiding the impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Compensating for the impact by replacing or providing substitute resources or environments.

Section 6. Section 18.08.170 of the Gig Harbor Municipal Code is hereby amended to read as follows:

A. Where wetlands are altered, the applicant shall meet the minimum requirements of this section.

B. When it is proposed to alter or eliminate a wetland and the department is considering the alteration or elimination, the applicant shall be required to replace or preferably enhance the functional and biological values of the affected wetland. The wetland values will be based on an approved evaluation procedure such as Wetlands

Evaluation Technique (WET), Habitat Evaluation Procedure (HEP) etc. A reduction in overall wetland acres is allowed if the conditions in subsection E are met. The recommended ratios for replacement/compensation are as established in the following table:

Wetland Type	Replacement Ratio
Category I	(No Alteration or Replacement)
Category II	Forested: 2:1 Scrub/Shrub: 1.5:1 Emergent: 1:1 Open Water: 1:1
Category III	Forested: 1.5:1 Scrub/Shrub: 1:1 Emergent: 1:1 Open Water: 1:1
Category IV	1:1

Section 7. Section 18.08.200 of the Gig Harbor Municipal Code is hereby amended to read as follows:

A. Wetland variance applications are a Type III permit procedure under Title 19 of the Gig Harbor Municipal Code, and shall be considered by the city according to variance procedures described A complete application for a wetland variance shall consist of the requirements as stated in Chapter 17.66 Gig Harbor Municipal Code, except that required showings for a wetland variance shall be according to subsection (B)(1) of this section. The burden is upon the applicant in meeting the required showings for the granting of a variance.

B. Wetland Variance Application. The examiner shall have the authority to grant a wetland variance from the provisions of this chapter, including variance for buffer widths, when, in the opinion of the examiner, the conditions as set forth below have been found to exist. In such cases a wetland variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required Showings for a Wetland Variance. Before any wetland variance may be granted, it shall be shown:

a. That there are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to other properties and which support the granting of a variance from the buffer width requirements, and

b. That such wetland variance is necessary for the preservation and

enjoyment of a substantial property right or use possessed by other similarly situated property but which because of this chapter is denied to the property in question, and

c. That the granting of such wetland variance will not be materially detrimental to the public welfare; and

2. Required Showings for Wetland Buffer Area Variance. Before any wetland buffer area variance may be granted, it shall be shown:

a. Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which because of this regulation is denied to the property in question, and

b. The granting of such buffer width variance will not be materially detrimental to the public welfare, and

c. The granting of the buffer width variance will not materially affect the subject wetland.

3. When granting a wetland variance, the examiner shall determine that the circumstances do exist as required by this section, and attach specific conditions to the wetland variance which will serve to accomplish the standards, criteria, and policies established by this chapter.

~~4. To apply for a wetland variance the applicant shall submit to the city a complete wetland variance application. Such application shall be submitted subsequent to the department's rating of the wetland as part of its review of a wetland application. The variance application shall include a site plan, pertinent information, a cover letter addressing the required showings for a variance, and appropriate fees. City review of the variance application shall follow the same public hearing process as that for an appeal of a decision of the department on a wetland application.~~

Section 8. Section 18.08.220 of the Gig Harbor Municipal Code is hereby amended to read as follows:

3. Any person who undertakes any activity within a regulated wetland or its buffer without first obtaining an approval required by this chapter, except as specifically exempted, or any person who violates one or more conditions of any approval required by this chapter or of any cease and desist order issued pursuant to this chapter shall incur a penalty ~~allowed per violation as provided for in Chapter 17.07 Gig Harbor Municipal Code. In the case of a continuing violation, each permit violation and each day of activity without a required approval shall be a separate and distinct violation. The civil penalty shall be assessed at a rate of \$250.00 per day per violation. The penalty provided~~ assessed shall be appealable to the city hearing examiner in accordance with the procedures established pursuant to ~~Chapter 15.06~~ Chapter 17.07 Gig Harbor Municipal Code.

Section 9. Section 18.08.190 of the Gig Harbor Municipal Code is hereby repealed.

Section 10. Section 18.08.250 of the Gig Harbor Municipal Code is hereby repealed.

Section 11. 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 12. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

MAYOR GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY ADMINISTRATOR, MARK HOPPEN

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: May 13, 1996
PASSED BY THE CITY COUNCIL: June 24, 1996
PUBLISHED:
EFFECTIVE DATE:

SUMMARY OF ORDINANCE NO. 726

of the City of Gig Harbor, Washington

On the 24th days of June, 1996, the City Council of the City of Gig Harbor, passed Ordinance No. 726. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO WETLANDS MANAGEMENT, CORRECTING CHAPTER 18.08 OF THE Gig Harbor Municipal Code TO REFLECT PRIOR AMENDMENTS AND UPDATING THE ORDINANCE FOR CONFORMANCE WITH THE REGULATORY REFORM ACT, CHAPTER 36.70B RCW, AND TITLE 19 OF THE GIG HARBOR MUNICIPAL CODE; AMENDING SECTIONS 18.08.030; 18.08.040; 18.08.060; 18.08.070; 18.08.100; 18.08.140; 18.08.170; 18.08.200; 18.08.220; REPEALING SECTIONS 18.08.190, 18.08.250.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 1996.

CITY ADMINISTRATOR, MARK HOPPEN