

ORDINANCE NO.754

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON RELATED TO THE CITY'S ENVIRONMENTAL REVIEW PROCEDURES, REVISING THOSE PROCEDURES TO INCORPORATE CHANGES REQUIRED BY AMENDMENTS TO THE STATE ENVIRONMENTAL POLICY ACT AND OTHER STATE LAWS, AMENDING SECTIONS 18.04.100 AND 18.04.140, REPEALING SECTION 18.04.230, AND ADDING NEW SECTIONS 18.04.125 AND 18.04.230 TO THE CITY'S MUNICIPAL CODE.

WHEREAS, changes in state laws and regulations mandate changes in the City's review, approval and appeal process for projects subject to the State Environmental Policy Act; and

WHEREAS, these changes must be adopted by ordinance and incorporated into the City's existing environmental procedures; NOW, THEREFORE,

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

Section 1. Section 18.04.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

18.04.100 Determination – Review at conceptual stage.

A. Preapplication conferences, as provided in GHMC section 19.02.001 shall also address environmental issues to familiarize the applicant with the City's SEPA regulations, process, policies and objectives.

B. If the city's only action on a proposal is a decision on a building permit or other license that requires detailed project plans and specifications, the applicant may request in writing that the city conduct environmental review prior to submission of the detailed plans and specifications.

C. In addition to the environmental documents an applicant shall submit the following information for early environmental review:

1. A copy of any permit or license application; and
2. Other information as the responsible official may determine.

Section 2. A new Section 18.04.125 is hereby added to the Gig Harbor

Municipal Code, to read as follows:

18.04.125 Consistency

The City's environmental review shall include a determination of the proposal's consistency with existing development regulations and the comprehensive plan. The consistency review shall determine whether the impacts of the proposal have been addressed in development regulations or the comprehensive plan. The planning decisions made in these documents shall not be reanalyzed in the environmental review of individual project proposals, nor will additional studies or mitigation be required if existing regulations and documents have adequately addressed the proposal's probable adverse impacts. The consistency determination described herein shall take place in conjunction with the consistency determination described in GHMC Chapter 19.04.

Section 3. Section 18.04.140B of the Gig Harbor Municipal Code is hereby

amended to read as follows:

18.04.140. EIS Preparation

A. Preparation of draft and final EIS's and SEIS's shall be under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

B. The draft and final EIS or SEIS shall be prepared, at the city's option by the city staff, the applicant or by a consultant approved by the city. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution. The fee for the preparation of a draft and final EIS shall be as established under Chapter 3.30 GHMC. Subject to delays caused by the applicant's failure to provide needed information, and other delays beyond the City's control, draft

and final EIS's will be completed within one year of the date of the declaration of significance, unless the City and the applicant agree in writing to a different estimated time period for completion.

C. The city may require an applicant to provide additional information which the city does not possess, including information which must be obtained by specific investigations. This provision is not intended to expand or limit an applicant's other obligations under WAC 197-11-100, or other provisions of regulation, statute or ordinance. An applicant shall not be required to produce information under this provision which is not specifically required by this chapter, nor is the applicant relieved of the duty to supply any other information required by statute, regulation or ordinance.

Section 4. Section 18.04.230 of the Gig Harbor Municipal Code is hereby repealed.

Section 5. A new Section 18.04.230 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.230 Appeals

A. SEPA appeals shall be limited to review of final threshold determinations, the adequacy of final environmental impact statements, mitigation or failure to mitigate environmental impacts, and project denials. Appeals of declarations of non-significance, EIS adequacy, mitigation and project denial and open record public hearings for the underlying permit(s), as described in GHMC Chapter 19.01, shall be consolidated and heard together. Declarations of significance, issued before a decision on the underlying permit(s), may be appealed and heard before the consolidated open record public hearing on the permit and other SEPA issues.

B. All SEPA appeals must be filed in writing with the responsible official within 14 calendar days of the date of the SEPA decision. The hearing date for appeals of declarations of significance issued before a decision on the permit, shall be not more than 45 days from the date the appeal is filed.

C. On receipt of a written notice of appeal, the responsible official shall determine if the notice is timely. If the notice is untimely, the responsible official shall advise the person(s) who filed the notice that no appeal hearing will be scheduled because the notice was untimely. If the appeal is timely, the responsible official shall set a hearing date and transmit the appeal notice to the hearing examiner.

D. Hearing Examiner SEPA appeals, and any consolidated public hearings on the underlying permit, shall be open record hearings, as described in GHMC Chapter 19.05. The hearing examiner shall take sworn testimony, consider all relevant evidence and decide the issues de novo; provided, however, that the responsible official's decision(s) shall be given substantial weight. The hearing examiner shall issue a written decision, which shall include specific findings of fact and conclusions of law, within 10 working days of the close of the hearing, unless a longer period is agreed to in writing by the applicant and the hearing examiner.

E. The hearing examiner's decision on threshold determinations and EIS adequacy shall be the final decision of the City. Appeals of the hearing examiner's decision on these issues shall be filed in the Pierce County Superior Court. Appeals of the hearing examiner's decision on SEPA mitigation and project denial shall be filed with the City Council.

F. Appeals to the City Council of SEPA mitigation and project denial appeals shall be consolidated with decisions subject to City Council review by GHMC Chapter 19.01. Decisions not subject to City Council review may not be appealed to the City Council as part of a SEPA mitigation or project denial appeal. In the appeal, the City Council shall review the hearing examiner's open record hearing decision in a closed record appeal as described in GHMC Chapter 19.06. The record on appeal shall consist the hearing examiner's findings of fact, conclusions of law, and decision; a taped or written transcript of the hearing; and any exhibits accepted into evidence at the hearing. No other evidence shall be considered unless it can be shown that the hearing examiner erred in excluding such evidence or that such evidence was not available at the time of the open record hearing. The City Council may reverse the decision of the hearing examiner based solely upon the criteria set forth the GHMC section 19.06.

G. The City Council's decision on project mitigation or denial, and the underlying permits, shall be the final decision of the City. Appeals of the City Council's decision shall be filed in the Pierce County Superior Court.

H. The responsible official shall give official notice whenever it issue a permit or approval for which a statute or ordinance establishes a time limit for commencing a judicial appeal.

I. The time limitations and procedures for judicial appeals of decisions in this section shall be as set forth in WAC 197-1-680 (4) and GHMC Title 19. Only a party to the proceeding appealed from may appeal the decisions set forth above.

Section 6. 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 7. 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: 4/9/97
PASSED BY THE CITY COUNCIL: 4/28/97
PUBLISHED: 5/7/97

EFFECTIVE DATE: 5/12/97
ORDINANCE NO. 754