

# **Gig Harbor Special City Council Meeting**

**January 29, 2007  
6:00 p.m.**



**AGENDA FOR SPECIAL  
GIG HARBOR CITY COUNCIL MEETING  
January 29, 2007 – 6:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**EXECUTIVE SESSION:** For the purpose of discussing potential litigation per RCW 42.30.110(1)(i).

**NEW BUSINESS:**

1. Ordinance – Amending the Procedure for Council Reconsideration of Hearing Examiner’s Decisions.

**ADJOURN:**

## **BACKGROUND.**

The Council asked the City Attorney to prepare an ordinance allowing the Council (or anyone else with standing) to request reconsideration of the Hearing Examiner's final decisions, prior to the time that a judicial appeal is filed. Attached is the proposed ordinance.

If the Council chooses to act on the ordinance, it has two options. The Council could use this meeting as a first reading, and then act on it during the second reading.

If the Council is interested in utilizing the procedure in the ordinance in order to submit a request for reconsideration to the Examiner on a recently issued decision, then the Council must pass it as an emergency ordinance. The City's procedure for passage of an emergency ordinance requires the vote of a majority plus one of the entire Council. GHMC Section 1.08.020. The emergency necessitating immediate adoption is the need to submit a request for reconsideration on a recently issued decision, to possibly eliminate the need for a City appeal of the decision.

If the Council utilizes the emergency adoption procedure, then I recommend that this ordinance, after passage, be scheduled for a first reading at the next Council meeting. Then, at the second reading of the ordinance at the following Council meeting, I recommend that the Council ratify its action to adopt the ordinance as an emergency measure. This will assist in defense of any subsequent challenges alleging that the ordinance was not properly adopted.

## **RECOMMENDATION:**

The City Attorney recommends adoption of the attached ordinance. If the Council would like to utilize the procedure in the ordinance in order to request reconsideration of any recently issued Hearing Examiner decision, the City Attorney recommends that it be adopted through the emergency adoption procedure in GHMC Section 1.08.020, which requires the vote of a majority of the membership of the entire Council. After that point, the procedure described above should be employed.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING RECONSIDERATION OF THE FINAL DECISION OF THE HEARING EXAMINER FOR PROJECT PERMIT APPLICATIONS, DESCRIBING THE PROCEDURE FOR FILING A REQUEST FOR RECONSIDERATION, IDENTIFYING THE PERSONS WHO MAY FILE A REQUEST FOR RECONSIDERATION, DESCRIBING THE HEARING EXAMINER'S AUTHORITY ON RECONSIDERATION AND NOTICE TO THE PUBLIC OF THE ISSUANCE OF THE RECONSIDERATION DECISION; ADDING A NEW SECTION 19.05.010 TO THE GIG HARBOR MUNICIPAL CODE.**

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WHEREAS, the City has eliminated the closed record appeal procedure for many project permit applications; and

WHEREAS, the closed record appeal procedure allowed the City Council to hear appeals of decisions of the Hearing Examiner; and

WHEREAS, while the City Council does not desire to re-establish the procedure for holding closed record appeals at this time, it does desire to establish a procedure that would allow persons to request reconsideration of the Hearing Examiner's decisions prior to the time a judicial appeal is filed; and

WHEREAS, adding a procedure allowing the Hearing Examiner to reconsider his/her decisions before they are judicially appealed may eliminate some judicial appeals; and

WHEREAS, the City's SEPA Responsible Official issued a threshold determination of \_\_\_\_\_ for this Ordinance on \_\_\_\_\_; and

WHEREAS, the City Council considered this Ordinance during its special City Council meeting of January 29, 2007; Now, Therefore,

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

Section 1. A new Section 19.05.010 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

**19.05.010 Reconsideration of Decision.**

A. Generally. Any person identified in GHMC Section 19.06.003 as having standing to file an administrative appeal may request reconsideration of a Decision of the hearing examiner which issues immediately after the open record public hearing on a project permit application described in this chapter.

B. Time to File. A request for reconsideration must be filed with the City Planning Director within 10 calendar days of the hearing examiner's written Decision. Such requests shall be delivered to the Director by mail, personal delivery or fax before 5:00 p.m. on the last business day of the reconsideration period. Requests for reconsideration that are received by mail after 5:00 p.m. on the last day of this reconsideration period will not be accepted, no matter when such requests were mailed or postmarked.

C. Computation of Time. For the purposes of computing the time for filing a request for reconsideration, the day the hearing examiner's decision is issued shall not be counted. If the last day of the appeal is a Saturday, Sunday, or holiday designated by RCW 1.16.050, or by a city ordinance, then the appeal must be filed on the next business day.

D. Content of Request for Reconsideration. Requests for reconsideration shall be in writing, be accompanied by the required reconsideration fee (which shall be the same as the administrative appeal fee), and contain the following information:

1. The name, address and phone number of the requestor;
2. Identification of the application and final decision which is the subject of the request for reconsideration;
3. Requestor's statement of grounds for reconsideration and the facts upon which the request is based;
4. The specific relief requested;
5. A statement that the requestor believes the contents of the request to be true, followed by his/her signature.

E. Effect. The timely filing of a request for reconsideration shall stay the hearing examiner's decision until such time as the hearing examiner issues a Decision on Reconsideration.

F. Notice of Request for Reconsideration. The Director shall provide mailed notice that a request for reconsideration has been filed to all parties of record as defined in GHMC Section 19.06.003.

- G. Hearing Examiner's Action on Request. The Hearing Examiner shall consider the request for reconsideration without a hearing. A decision on the request for reconsideration shall issue within 20 days after receipt of the request for reconsideration by the City.
  
- H. Limitations on Hearing Examiner's Reconsideration. The Hearing Examiner shall consider the request for reconsideration based on the administrative record compiled on the application up to and including the date of the Hearing Examiner's decision. The Hearing Examiner may require or permit corrections of ministerial errors or inadvertent omissions in the preparation of the record and the Hearing Examiner's decision. The Reconsideration Decision issued by the Hearing Examiner may modify, affirm or reverse the Hearing Examiner's decision.
  
- I. Notice of Final Decision on Reconsideration. The Director shall issue a Notice of Final Decision on Reconsideration in the manner set forth and to the persons identified in GHMC Section 19.05.009.
  
- J. Further Appeals. If no administrative appeal is allowed of the Hearing Examiner's Decision, and a request for reconsideration was timely filed, then any judicial appeal must be filed within twenty-one (21) days after issuance of the Decision on Reconsideration, as provided in Chapter 36.70C RCW.

Section 2. 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, clause or phrase of this Ordinance.

Section 3. Emergency Adoption and Effective Date. This Ordinance has been passed by a majority plus one of the entire Council, pursuant to RCW 35A.12.130. Emergency adoption is necessary for the protection of public health, public safety, public property and the public peace, given that the City currently has no procedure to allow reconsideration of the decisions of the hearing examiner, and this procedure could be beneficial for use with at least one of the Examiner's recent decisions.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF GIG HARBOR

\_\_\_\_\_  
CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 1/26/07  
PASSED BY THE CITY COUNCIL:  
PUBLISHED: EFFECTIVE DATE:  
ORDINANCE NO: