ORDINANCE NO. 1256

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AGREEMENTS, AMENDING SECTION 19.08.020 TO ALLOW THE DEVIATION OF DEVELOPMENT STANDARDS IN THE DEFINED DOWNTOWN AREA THROUGH A DEVELOPMENT AGREEMENT; AMENDING SECTION 19.08.040 OF THE GIG HARBOR MUNICIPAL CODE TO ESTABLISH PROCESSING REQUIREMENTS FOR DEVELOPMENT AGREEMENTS IN THE DOWNTOWN AREA; AMENDING SECTION 19.08.050 OF THE GIG HARBOR MUNICIPAL CODE TO CLARIFY THAT THE TERM OF A DEVELOPMENT AGREEMENT CANNOT EXCEED TWENTY YEARS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, cities may enter into development agreements with developers for the purposes set forth in RCW 36.70B.170; and

WHEREAS, the City of Gig Harbor has an established procedure for the review and approval of development agreements in chapter 19.08 GHMC; and

WHEREAS, the City of Gig Harbor desires to change the procedures for review and approval of development agreements for efficient operation of government; and

WHEREAS, Goal 2.2.4a of the Comprehensive Plan states that the City should "utilize special or extra land use planning techniques such as district overlays or design review guidelines to protect or enhance historical or cultural identities. Special districts may be established for a mixed-use waterfront, a pedestrian- oriented downtown district, a special old-town business district or an historical residential neighborhood in the Millville Area;" and

WHEREAS the City of Gig Harbor desires to allow for the deviation of development standards in the downtown area as defined in Section 1 of this ordinance and mapped on Exhibit A to this ordinance in order to protect and enhance the City's downtown historical and cultural identity; and

WHEREAS the City of Gig Harbor desires to provide a more streamlined process for the review of development agreements in the downtown area in order to facilitate development flexibility; and

WHEREAS, on December 10, 2012, the City Council passed Resolution 920 adopting a vision statement for The Harbor; and

WHEREAS, The Harbor Vision statement was developed after interviews with over 80 people and two town hall meetings with over 180 people in attendance; and

WHEREAS, the downtown area as defined in Section 1 and shown in Exhibit A to this ordinance was developed based on mapping and comments received during the interviews and town hall meetings held to develop the Harbor Vision; and

WHEREAS, RCW 36.70B.200 requires that the City Council pass an ordinance or resolution if a development agreement is approved after a public hearing; and

WHEREAS, a development agreement associated with a project permit application is not subject to the final decision deadlines in RCW 36.70B.080 and the City's corresponding codes; and

WHEREAS, the City's SEPA Responsible Official determined that this Ordinance is categorically exempt from SEPA, pursuant to WAC 197-11-800(19); and

WHEREAS, the proposed development regulations amendments were forwarded to the Washington State Department of Commerce on November 7, 2012, pursuant to RCW 36.70A.106, and was granted expedited review on December 12, 2012; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on January 14, 2013; and

WHEREAS, on January 28, 2013, the City Council held a second reading during a regular City Council meeting; and

WHEREAS, on February 11, 2013, the City Council held a third reading during a regular City Council meeting; Now, therefore,

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

Section 1. Section 19.08.020 of the Gig Harbor Municipal Code shall be amended to read as follows.

19.08.020 General provisions of development agreements.
   A. Comprehensive Plan. A development agreement shall be consistent with the applicable policies and goals of the city of Gig Harbor comprehensive plan.

B. Development Standards. Except as provided in section C below, Aa development agreement shall be consistent with applicable development regulations; provided, a development agreement may extend the durations of approval of project permits and allow phasing plans different from those otherwise imposed under the Gig Harbor Municipal Code.

1. Any approved development standards that differ from those in the code shall not require any further rezone, variance from city standards or other city approval apart from development agreement approval. The development standards as approved through a development agreement shall apply to and govern the development and implementation of each covered property in lieu of any conflicting or different standards or requirements elsewhere in the Gig Harbor Municipal Code.

2. Subsequently adopted standards which differ from those of a development agreement adopted by the city shall apply to the covered property only where necessary to address imminent public health and safety hazards or where the development agreement specifies a time period or phase after which certain identified standards can be modified.

3. Projects subject to a development agreement are required to obtain approval for all applicable project permits unless otherwise expressly provided for in the approved development agreement.

C. Deviations from Development Standards. Deviations from development standards in addition to those allowed in section B above shall only be allowed as described below.

1. A development agreement related to property in a planned community development land use designation (PCD) may allow further deviations from development standards imposed under the Gig Harbor Municipal Code for the following reasons:

a. To provide flexibility to achieve public benefits; or

b. In order to respond to changing community needs; or

c. To encourage modifications which provide the functional equivalent or adequately achieve the purposes of otherwise applicable city standards.

2. A development agreement related to property within the downtown area may allow deviations from development standards imposed under the Gig Harbor Municipal Code as provided for in the subsections below.

a. The proponent shall demonstrate consistency with the following requirements:

i. The project is consistent with the adopted vision for The Harbor; and

ii. The project preserves significant historic structures or demonstrates preservation and enhancement of the existing downtown character; and

iii. The project will provide public amenities above that required by the existing zoning standards, including but not limited to parks, shoreline access, plazas, and/or pedestrian connections; and

iv. The project will result in a superior design solution to what would otherwise be achieved by applying the specific requirements of the Design Manual, GHMC 17.99; and

v. The proposed deviations to zoning development standards are consistent with the public health, safety, convenience and general welfare.

b. All land use permits for projects developed utilizing this subsection shall be processed as a Type III permit or higher numbered permit type if applicable. The design review application for a project utilizing this subsection shall be reviewed by the City's Design Review Board for consistency with the general requirements of Chapter 17.99, the Design Manual. The Design Review Board's recommendation on the project shall be forwarded to Hearing Examiner for consideration as part of the underlying project permit.

c. The downtown area is defined as the properties within:

i. The Downtown Business District (DB); and

ii. The Waterfront Commercial (WC) district adjacent to the DB district, and

iii. The Residential and Business District (RB-1) at the intersection of Soundview Drive and Harborview Drive; and

iv. Pierce County Assessor Treasurer Tax Parcel Number 0221081108.

2 3. A development agreement cannot authorize deviations from the uses, minimum and maximum densities, maximum gross floor area, or maximum structure height allowed in the underlying zoning district unless approved by a majority plus one of the whole council after a minimum of two public hearings on the agreement.

4. In no case shall a development agreement authorize deviations from the following development standards. Variance and deviation processes contained within the following specified codes may be applied for during project permitting after the approval of a development agreement.

3a. A development agreement cannot authorize deviations from requirements of GHMC Title 15, Buildings and Construction. Building permit applications shall be subject to the building codes in effect when a complete building permit application is submitted.

4b. A development agreement cannot authorize deviations from requirements of GHMC Title 18, Environment.

c. A development agreement cannot authorize deviations from the requirements of the Gig Harbor Shoreline Master Program.

5. Any approved development standards that differ from those in the code shall not require any further rezone, variance from city standards or other city approval apart from development agreement approval. The development standards as approved through a development agreement shall apply to and govern the development and implementation of each

~~covered property in lieu of any conflicting or different standards or requirements elsewhere in the Gig Harbor Municipal Code.~~

~~6. Subsequently adopted standards which differ from those of a development agreement adopted by the city shall apply to the covered property only where necessary to address imminent public health and safety hazards or where the development agreement specifies a time period or phase after which certain identified standards can be modified.~~

~~C~~D. Contents of a development agreement. As applicable, the development agreement shall specify the following:

1. Project components which define and detail the permitted uses, residential densities, nonresidential densities and intensities or building sizes;

2. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;

3. Mitigation measures, development conditions and other requirements of Chapter 43.21C RCW;

4. Design standards such as architectural treatment, maximum heights, setbacks, landscaping, drainage and water quality requirements and other development features;

5. Provisions for affordable housing, if applicable;

6. Parks and common open space preservation;

7. Phasing;

8. A build-out or vesting period for applicable standards; and

9. Any other appropriate development requirement or procedure which is based upon a city policy, rule, regulation or standard.

~~D~~E. As provided in RCW 36.70B.170, the development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

Section 2. Section 19.08.040 of the Gig Harbor Municipal Code shall be amended to read as follows.

19.08.040 Processing procedure for development agreements.

A. Legislative Actions. A development agreement associated with a legislative action such as a comprehensive plan amendment or area-wide rezone shall be processed in accordance with the procedures established in this title and subsection, except as provided for in subsection C of this section. The planning commission shall make its recommendation on any development agreement relating to legislative action to the city council. A public hearing shall be held on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

B. Project Permits. A development agreement associated with a project permit application shall be processed in accordance with the

procedures established in this title and subsection, except as provided for in subsection C of this section.

1. If the final decision on the underlying project permit application is made by the hearing examiner, then the hearing examiner shall consider both the project permit application and the proposed development agreement together during the public hearing. The hearing examiner shall make a recommendation to the council on the development agreement and his/her decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the hearing examiner may then issue his/her final decision on the underlying project permit application. Nothing in this section obligates the hearing examiner to forward a recommendation to the city council for further consideration if the hearing examiner denies the underlying project permit application.

2. If the final decision on the underlying project permit application is made by the city administrative staff, then the city staff shall consider both the project permit application and the proposed development agreement together. The city staff shall make a recommendation to the council on the development agreement, and the city staff's decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing. If the city council approves the development agreement, the council shall, by resolution or ordinance, authorize the mayor to execute the development agreement on behalf of the city. At this point, the city staff may then issue its final decision on the underlying project permit application. Nothing in this section obligates city staff to forward a recommendation to the city council for further consideration if city staff denies the underlying project permit application.

3. If a final decision on an underlying project permit application has been previously made by the hearing examiner or city administrative staff and the application was approved, the city staff shall make a recommendation to the council on the development agreement. A public hearing shall be held on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

C. PCD and Downtown. A development agreement associated with property in a planned community development (PCD) land use designation or downtown area as defined by GHMC 19.08.020(C)(2)(c) shall be processed in accordance with the procedures established in this title and subsection. The council shall consider the proposed development agreement at a regular council meeting and decide if the agreement should be processed further. If a majority of the whole council approves

further review of the development agreement, the agreement shall be reviewed as follows:

    1. If the development agreement is associated with a legislative action, the planning commission shall make a recommendation to the council on the development agreement. The council shall hold a public hearing on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

    2. If the development agreement is associated with a project permit application or not associated with any underlying action, the planning and building committee of the council shall make a recommendation to the council on the development agreement. The council shall hold a public hearing on the development agreement and if approved, the council shall authorize the mayor, in a resolution or ordinance, to execute the development agreement on behalf of the city.

  D. Public Notice. All public meetings and public hearings on a development agreement shall be noticed as follows:

    1. Not less than 10 days prior to the public hearing date, a notice of the public hearing shall be sent to property owners within 300 feet of the property subject to the development agreement and to others who have submitted comments and/or requested notice.

    2. Notice of the public hearing shall be posted on the property subject to the development agreement not less than 10 days prior to the hearing date. Notice shall be posted in the manner required by GHMC 19.03.001(A).

    3. Notice of the public meeting shall be published in the city's official newspaper not less than 10 days prior to the meeting date.

    4. The notice of the public hearing shall contain all items listed in GHMC 19.03.003(A).

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

Section 3. Section 19.08.050 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.08.050 No deadline for final decision, form of agreement, term, recordation.

  A. Development agreements are not "project permit applications" as defined in RCW 36.70B.020. Therefore, there is no deadline for processing a development agreement. If an applicant requests that the city execute a development agreement as part of its approval of a project permit application, the applicant must agree to sign a written waiver of the deadline for issuance of a final decision of the project permit application, so that the development agreement may be processed.

B. No development agreement shall be presented to the decision-making body unless in a form approved by the city attorney. Every development agreement shall be signed by the property owner and all other parties with a substantial beneficial interest in the property that is the subject of the development agreement, prior to any public hearing held for the purpose of authorizing execution of the development agreement.

C. Term.

1. Development agreements may be approved for a maximum period of 20 years.

2. In determining the appropriate term for a development agreement, the council should consider the type, size and location of development and phasing if proposed. ~~The council may consider shorter terms with extensions.~~

3. Extensions. If extensions are authorized in a development agreement, an applicant must request the extension at least 60 days prior to expiration. For development agreements associated with project permit applications, the planning director may grant an extension for up to five years if the applicant can satisfactorily show that, for a residential project, at least 50 percent of the residential units are constructed, or for nonresidential and mixed use projects, at least 50 percent of the gross floor area is constructed. All other requests for extensions shall be reviewed by the city council, unless another process is expressly provided for in the development agreement. <u>In no case shall an extension be granted which would allow a development agreement to exceed 20 years.</u>

D. Recordation. A development agreement shall be recorded against the property, in the real property records of the Pierce County ~~assessor's~~ <u>Auditor's</u> office. During the term of the development agreement, the agreement is binding on the parties and their successors, including the property owners in any area that is annexed to the city.

<u>Section 4.</u> <u>Severability.</u> If any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

<u>Section 5.</u> <u>Effective Date.</u> This Ordinance shall take effect and be in full force on March 25, 2013.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 11th day of February, 2013.

CITY OF GIG HARBOR

(signature)

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

(signature)

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

(signature)

FILED WITH THE CITY CLERK: 01/09/13
PASSED BY THE CITY COUNCIL: 02/11/13
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ORDINANCE NO: 1256

EXHIBIT A