

ORDINANCE NO. 1234

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS AND WITHIN 200 FEET LANDWARD OF SPECIAL FLOOD HAZARD AREAS; EXTENDING INTERIM REGULATIONS REQUIRING A HABITAT ASSESSMENT OR LETTER FROM NMFS OR FEMA ESTABLISHING COMPLIANCE WITH THE ENDANGERED SPECIES ACT; ESTABLISHING A WORK PLAN; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in *National Wildlife Federation and Public Employees for Environmental Responsibility v. Federal Emergency Management Agency, et al.*, 345 F. Supp. 2d 1151 (2004), the United States District Court for the Western District of Washington ruled that the Federal Emergency Management Agency ("FEMA") must undergo formal consultation under Section 7 of the Endangered Species Act ("ESA") because the implementation of the National Flood Insurance Program ("NFIP") may affect listed species found in the Puget Sound Region; and

WHEREAS, the as a result of the consultation, National Marine Fisheries Service ("NMFS") issued a Biological Opinion on September 22, 2008, that documented the adverse effects of FEMA's NFIP on listed species found in the Puget Sound Region, which includes Puget Sound Chinook Salmon, Puget Sound Steelhead and Southern Resident Killer Whales; and

WHEREAS, cities that participate in the NFIP must demonstrate compliance with the Biological Opinion by choosing one of three options provided by FEMA: Option #1 - adopt the FEMA-developed ESA compliant model ordinance; Option #2 - meet FEMA checklist for ESA compliance with current regulations; or Option #3 - permit by permit demonstration of ESA compliance; and

WHEREAS, the City is currently undergoing review by FEMA for Option #2 but that option cannot become effective until the City completes the update of its Shoreline Master Program; and

WHEREAS, until the requirements for Option #2 are met, the City believes that Option #3 best meets the needs of the environment and community. This requires the City to maintain documentation from the applicant obtained from a habitat assessment or Section 7 consultation with NMFS, that demonstrates compliance with the ESA. This documentation is to be maintained by the City with the applicable permit file and available for FEMA review upon request; and

WHEREAS, the City Council deems it to be in the public interest to extend the interim regulations but not to codify permanent regulations until either Option #2 is approved or the City otherwise determines to adopt Option #3 on a permanent basis; and

WHEREAS, the City Council held a public hearing on March 12, 2012 to take public testimony relating to this ordinance;

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

Section 1. Purpose. The purpose of this ordinance is to extend the interim regulations set forth in Ordinance No. 1223 for a period of six months.

Section 2. Findings in Support of Extending Interim Regulations. In addition to the findings previously made as set forth in Ordinance No. 1223, the Gig Harbor City Council makes the following additional findings:

1. The City Council adopts the recitals set forth above in support of extending the interim regulations originally adopted under Ordinance No. 1223.

2. [Other, if any.]

Section 3. Extension of Interim Regulations. The interim regulations adopted under Ordinance No. 1223 shall remain in effect for an additional period of six months, and shall automatically expire at that time unless the same are extended as provided in RCW 36.70A.390 and RCW 35A.63.220 prior to expiration, or unless the same are repealed or superseded by permanent regulations prior to expiration.

Section 4. Work Plan. The present schedule for adoption of the Shoreline Master Program (SMP) and anticipated adoption of FEMA Option #2 is as follows:

1. **February 29, 2012**-Issued SEPA Determination of Nonsignificance for SMP update. 60-day Department of Commerce Integrated SEPA/GMA review and public review and comment period initiated;
2. **April 30, 2012**-60-day SEPA comment period ends;
3. **May 7, 2012**-7 day SEPA appeal period ends;
4. **May 14, 2012**-City Council Public Hearing on February 29, 2012 draft SMP;
5. **May 29, 2012**-City Council First Reading of Ordinance
6. **June 11, 2012**-City Council 2nd Reading of Ordinance-Revised draft SMP and city response to FEMA's 12.8.11 letter provided to FEMA for review and consideration;
7. **July 2, 2012**-City Council adopted SMP provided to the Washington State Department of Ecology for review pursuant to RCW 90.58.090. Per the RCW, Ecology shall strive to complete its review in a maximum of 180-days. Per

RCW 90.58.090(2)(b), Ecology, at its discretion, may conduct a public hearing on the request within its designated 30-day comment period.

8. **February, 2013**-Ecology takes final action of city approved SMP and the master program becomes effective.
9. **February, 2013**-submit Ecology-approved SMP to FEMA for review and consideration as part of City's Option #2 approach for complying with the NMFS Biological Opinion.
10. FEMA approval of Option #2 approach to follow.

The Planning Director shall review the progress of the City's Shoreline Master Program update and consider whether permanent adoption of FEMA Option #3 should be recommended. The Planning Director shall make a recommendation to the Gig Harbor City Council by the end of August, 2012, as to whether to extend the interim regulations in anticipation of adoption of the Shoreline Master Program or whether to adopt Option #3 on a permanent basis.

Section 5. Copy to Commerce Department. Pursuant to RCW 36.70A.106(3), the City Clerk is directed to send a copy of this ordinance to the State Department of Commerce for its files within ten (10) days after adoption of this ordinance.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be 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 passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor *Pro Tem* of the City of Gig Harbor, this 12th day of March, 2012.

CITY OF GIG HARBOR

Mayor Pro Tem Ekberg

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck

FILED WITH THE CITY CLERK: 03/07/12
PASSED BY THE CITY COUNCIL: 03/12/12
PUBLISHED: 03/26/12
EFFECTIVE DATE: 03/26/12
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