

ORDINANCE NO. 1226

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE ADOPTION OF A CIVIL PANALTIES PROCESS FOR VIOLATIONS RELATED TO ALL LAND USE CODES (TITLES 16, 17 AND 18) AS WELL AS CONDITIONS IMPOSED ON LAND USE PERMITS GRANTED BY THE CITY ; ADDING CHAPTER 19.16, AMENDING SECTIONS 16.09.002, 17.07.004, 17.07.006, 18.08.220 AND REPEALING SECTIONS 17.07.008, 17.07.010, 17.07.012, 17.07.014, 17.07.016, 17.07.018, 17.07.020 17.07.022 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the enforcement process for land use regulatory violations are inefficient due to the existing codified processes; and

WHEREAS, the City desires to implement a civil penalty process of enforcement for land use violations; and

WHEREAS, a civil penalty process is utilized by several cities and counties within the State of Washington; and

WHEREAS, jurisdictions that utilize a civil penalty process for land use violations have found that the process is easier to administer; and

WHEREAS it is anticipated that utilizing a civil penalties process will result in increased compliance with land use codes; and

WHEREAS, the City's SEPA Responsible Official found that this Ordinance is Categorically Exempt from SEPA; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on October 24, 2011; and

WHEREAS, on November 14, 2011, the City Council held a second reading during a regular City Council meeting; Now, therefore,

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

Section 1. A new Chapter 19.16 is hereby added to the Gig Harbor Municipal Code which shall read as follows:

Chapter 19.16 GHMC Enforcement of Land Use Codes.

19.16.010 Purpose.

To ensure that the provisions of the Gig Harbor Municipal Code (“Code”) related to all Land Use Codes (Titles 16, 17 & 18 GHMC), including but not limited to conditions imposed on land use permits granted by the City, are administered, enforced, and upheld to protect the health, safety and welfare of the general public.

19.16.020 Applicability.

This Chapter establishes a civil method, where permitted under the law, to enforce violations of the Chapters and Titles of the Code referenced in GHMC 19.16.010, provided an alternate civil method, other than abatement, is not specifically set forth in the Code. Where the alternate civil method is abatement, both methods may apply.

A. The City Administrator and/or his/her authorized representative (the “Administrator”), shall have the authority to enforce the Land Use Codes of the City of Gig Harbor.

B. The Code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

C. It is the intent of this Chapter to place the obligation of complying with its requirements upon the owner, lessee, occupier, or other person responsible for the condition of the land and buildings within the scope of this Chapter.

D. No provision of, or term used in this Chapter is intended to impose upon the City, or any of its officers or employees, any duty that would subject them to damages in a civil action.

19.16.030 Violation Review Criteria.

Each violation requires a review of all relevant facts in order to determine the appropriate enforcement sequence and response. When enforcing the provisions of this Chapter, the Administrator may, as practical and possible, seek to resolve violations without resorting to formal enforcement measures. When formal enforcement measures are necessary, the Administrator may seek to resolve violations administratively prior to imposing civil penalties or seeking other remedies. The Administrator may seek to gain compliance via civil penalties prior to pursuing abatement or criminal penalties. Nothing herein shall be interpreted to require the Administrator to follow a specific sequence or order of enforcement in circumstances when swifter response by the City may be reasonable or necessary. In addition, the Administrator may consider a variety of factors when determining the appropriate enforcement sequence and response, including but not limited to:

A. Severity, duration, and impact of the violation(s), including whether the violation has a probability of placing a person or persons in danger of death or bodily harm, causing significant environmental harm, or causing significant physical damage to the property of another;

- B. Compliance history, including any identical or similar violations or notice of violation at the same site or on a different site but caused by the same party;
- C. Economic benefit gained by the violation(s);
- D. Intent or negligence demonstrated by the person(s) responsible for the violation(s);
- E. Responsiveness in correcting the violation(s); and
- F. Other circumstances, including any mitigating factors.

19.16.040 Stop Work Order

A. The Administrator shall have the authority to issue a Stop Work Order whenever any activity, work or development is being done in violation of any of the Land Use Codes, or without a permit, review or authorization required by the Land Use Codes, or contrary to any permit, required review, or authorization that may result in violation of the Land Use Codes. The Stop Work Order shall be posted on the site of the violation containing the following information:

- 1. The street address or a description of the building, structure, premises, or land where the violation has occurred, in terms reasonably sufficient to identify its location;
- 2. A description of the potential violation and a reference to the provisions of the Code that may have been violated;
- 3. A description of the action required to remedy the potential violation, including but not limited to corrections, repairs, demolition, removal, restoration, time period to comply, after which a Notice of Violation may be issued, or any other appropriate action as determined by the Administrator;
- 4. The appropriate department and/or division investigating the case and the contact person.

B. With the exception of emergency work determined by the Administrator to be necessary to prevent immediate threats to the public health, safety and welfare or stabilize a site or prevent further property or environmental damage, it is unlawful for any work to be done after the posting or service of a Stop Work Order until authorization to proceed is provided by the Administrator.

C. Proof of posting shall be made by a written declaration under penalty of perjury executed by the person effecting the posting, declaring the time and date of posting, and the manner by which the posting was made.

19.16.050 Voluntary Compliance.

The Administrator may pursue a reasonable attempt to secure voluntary compliance by contacting the owner or other person responsible for any violation of this Code, explaining the violation and requesting compliance. This contact may be in person or in writing or both.

19.16.060 Investigation and Notice of Violation.

A. If the Administrator has a reasonable belief based on evidence that a violation of any of the Land Use Codes exists, and the Stop Work Order and/or voluntary compliance measures outlined above either have already been sought and have been unsuccessful, or are determined not to be appropriate for the circumstances, the Administrator may issue a Notice of Violation containing the following to the owner, or if

different and readily identifiable, to the lessee, the person in control of the property where the violation has occurred, or the person committing the violation:

1. The street address or a description of the building, structure, premises, or land where the violation has occurred, in terms reasonably sufficient to identify its location;
2. A description of the violation and a reference to the provisions of the Code that have been violated;
3. A description of the action required to remedy the violation, which may include corrections, repairs, demolition, removal, restoration, submittal of a work plan or any other appropriate action as determined by the Administrator;
4. A statement that the required action must be taken or work plan submitted within the time period provided as set forth in the Notice of Violation, after which the City may impose monetary civil penalties and/or abate the violation in accordance with the applicable provisions of this Code;
5. The appropriate department and/or division investigating the case and the contact person;
6. A statement that the person to whom a Notice of Violation is directed may appeal the Notice of Violation to the Hearing Examiner, or his or her designee, including the deadline for filing such an appeal. Request for appeal must comply with requirements set forth in GHMC 19.16.080 and must be received by the City Clerk's Office, no later than 10 days after the Notice of Violation has been served;
7. A statement that if the person to whom the Notice of Violation is issued fails to submit a written request for appeal within 10 working days of service or fails to abate the violation within the time period provided as set forth in the Notice of Violation, the City may assess monetary penalties, as outlined in the Civil Penalty section below, against the owner, or if different and readily identifiable, against the lessee, the person in control of the property where the violation has occurred, and the person committing the violation.

B. Time to comply. When calculating a reasonable time for compliance, the enforcement officer shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations; and
5. Any other circumstances beyond the control of the responsible party.

C. The Notice of Violation shall be served by any one or any combination of the following methods:

1. By first-class mail to the last known address of the owner, or if different and readily identifiable, the lessee, the person in control of the property where the violation has occurred, or the person committing the violation as applicable; or
2. By personal service upon the owner, or if different and readily identifiable, upon the lessee, the person in control of the property where the violation has occurred, or the person committing the violation as applicable.
3. The Administrator may choose to post notice on the property. However, notice by first class mail or personal service shall also be provided.

D. The Administrator may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter any building or premises subject to the consent or warrant to perform the duties imposed by this Chapter.

E. If the violation has been properly corrected by the deadline imposed by the Administrator, the case will be closed. If it has not, then Civil Penalties, Abatement, or Criminal Penalties may be imposed against the person(s) named in the Notice of Violation as the party(ies) in violation, at the reasonable discretion of the Administrator, in accordance with the provisions of this Chapter.

19.16.070 Civil Penalty

A. Any person who fails to remedy a violation or take the corrective action described by the Administrator in a Notice of Violation within the time period provided may be subject to monetary civil penalties. The Civil Penalty will be either:

1. Prepared and sent by first-class mail to the last known address(es) of the person(s) named in the Notice of Violation as the party(ies) in violation; or
2. Personally served upon the person(s) named in the Notice of Violation as the party(ies) in violation; or
3. The Administrator may choose to post notice on the property. However, notice by first class mail or personal service shall also be provided.

B. The Civil Penalty shall contain the following:

1. A statement indicating that the party(ies) in violation is being issued civil penalties for failing to properly or timely implement the corrective actions outlined by the City in the Notice of Violation, and that additional civil penalties may be issued until corrective actions are properly and timely implemented and the violation abated;
2. The address of the site and specific details of the violation which is to be corrected;
3. The appropriate department and/or division investigating the case and the contact person;
4. The number of days in violation since service of the Notice of Violation (in case of first Civil Penalty) or the most recently issued civil penalty on the same violation (in case of second or subsequent Civil Penalty) and amount of monetary penalty being assessed as a result;
5. A statement that the person(s) to whom the Civil Penalty is issued may appeal it to the Hearing Examiner, or his or her designee, including the deadline for filing such an appeal. Request for appeal must comply with requirements set forth in GHMC 19.16.080 and must be received by the City Clerk's Office, no later than 10 working days after the Civil Penalty has been served;
6. A statement that if the person to whom the Civil Penalty is issued fails to submit a written request for appeal within 10 working days of service or fails to abate the violation, the City may continue to assess monetary penalties, against the owner, or if different and readily identifiable, against the lessee, the person in control of the property where the violation has occurred, or the person committing the violation.

C. The monetary civil penalties for violations of this Code shall be as follows, unless a different amount/penalty is specifically provided elsewhere in the Code for the violation:

The amount of civil penalty per each violation for each day in violation shall be \$100. At the time a Civil Penalty is issued, calculation of the amount assessed shall be based on no more than the number of past days during which the violation remained uncorrected since the service of the Notice of Violation (in case of first civil penalty) or the most recently issued Civil Penalty on the same violation (in case of second or subsequent civil penalty);

D. Daily penalties will continue to accumulate until the violation is corrected, but the accumulated amount, or part thereof, may only be assessed to party(ies) in violation by issuing and serving a Civil Penalty.

E. Any person to whom a Civil Penalty is issued and served may appeal it to the hearing examiner; PROVIDED, that any issue whatsoever, including but not limited to nature of violation, amount of penalty, corrective measures, abatement or payment made, that was previously appealed or could have been appealed earlier with the Notice of Violation or previously issued Civil Penalty on the same violation, but either was not properly/timely appealed or was sustained by the Hearing Examiner, shall not be subject to another appeal.

19.16.080 Notice of Violation and Civil Penalty Appeals

A. A person to whom a Notice of Violation or Civil Penalty is issued and served may appeal the Notice of Violation or Civil Penalty by filing a written request for appeal with the City Clerk no later than 10 working days after said Notice of Violation or Civil Penalty is served. Each request for appeal shall contain the address and telephone number of the person making the request and the name and address of any person who may represent him or her. Each request for appeal shall set out the basis for the appeal. Failure to submit specific grounds for appeal in writing in the request may result in the dismissal of the appeal by the Hearing Examiner prior to any hearing.

B. If an appeal is submitted, the Hearing Examiner, or his or her designee, will conduct a hearing at the next available hearing date for the Hearing Examiner after the City issues a Notice of Hearing. For good cause, the Hearing Examiner may, at his or her discretion, change a previously set hearing date.

C. If an appeal is submitted, the City shall mail a Hearing Notice giving the time, location, and date of the hearing, by first-class mail to person(s) to whom the Notice of Violation or Civil Penalty was directed and any other parties identified in the appeal request.

D. The Hearing Examiner, or his or her designee, shall conduct a hearing on the violation or penalty. The Administrator, as well as the person(s) to whom the Notice of Violation or Civil Penalty was directed, may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to establish, by a preponderance of the evidence, that the violation has occurred and that the required corrective action is reasonable, or that the Civil Penalty was appropriately assessed for noncompliance with this Code.

E. The Hearing Examiner shall determine whether the City has established, by a preponderance of the evidence, that the violation has occurred and that the required

corrective action is reasonable, or that the Civil Penalty was appropriately assessed and reasonable, and based on that determination shall issue a Final Order that affirms, modifies, or vacates the Notice of Violation or Civil Penalty being appealed. The City's Hearing Examiner rules shall apply. The Hearing Examiner's Final Order shall contain the following information:

1. The decision regarding the alleged violation including findings of facts and conclusion of law based thereon;
2. If applicable, a statement that the required corrective actions imposed by the City are affirmed, modified, or waived;
3. If applicable, any additional conditions imposed by the Hearing Examiner regarding the violation and any corrective action, and the date and time by which the additional condition and/or correction must be met and/or completed; and
4. If applicable, a statement that any associated civil penalties are affirmed, modified, or waived.

F. If the appellant and/or any person(s) to whom the appealed Notice of Violation or Civil Penalty was directed fails to appear at the scheduled hearing, the Hearing Examiner shall proceed with the hearing and issue a Final Order based on the evidence submitted by the party(ies) in attendance.

G. The Final Order shall be served in person or by First Class mail on the appellant and any person(s) to whom the appealed Notice of Violation or Civil Penalty was directed.

H. A Final Order of the Hearing Examiner shall be considered the final administrative decision and may be appealed to a court of competent jurisdiction within 21 calendar days of its issuance, or if applicable, as provided in RCW 36.70C.040.

19.16.085 Collection of Civil Penalty

A. The Civil Penalty constitutes an obligation of the person, firm, or corporation to whom the Civil Penalty is directed. Civil Penalty assessed must be paid to the City within 30 calendar days from the date of service of the Civil Penalty or, if an appeal is filed, the time required in Hearing Examiner's Final Order (30 days after issuance of Order if no time requirement is specified). Civil Penalty may also jointly and severally be assessed against the property where the violation occurred when permitted by law.

B. Civil Penalty that is not paid within 30 days may be referred to a collection agency, officially approved by the City of Gig Harbor, for collection.

19.16.090 Abatement

A. In the event that compliance is not achieved through the measures outlined above in GHMC 19.16.040 through 19.16.080, or that said measures are not, at the reasonable discretion of the Administrator, appropriate to remedy the violation, the City may declare the violation a public nuisance, and remove or correct the same through any lawful means of abatement that is determined to be proper by the City Attorney.

B. Using any lawful means, the City may enter unsecured property and may remove or correct a violation which is subject to abatement with the consent of the owner and person in control of the premises. If the owner and person in control of the premises does not consent to entry, the City may seek such judicial process in Pierce County

Superior Court as it deems necessary to effect the removal or correction of such condition.

19.16.100 Criminal Penalty.

In certain instances, where the aforementioned enforcement and penalty provisions outlined in this Chapter do not result in compliance or are not appropriate for achieving compliance, the Administrator may refer the matter to the Police Department for criminal investigation and prosecution. Unless a different criminal penalty is provided specifically for the violation, violations of Chapters and Titles of Code referenced in GHMC 19.16.010 shall constitute a Gross Misdemeanor as set forth in GHMC 1.16.010. Upon conviction and pursuant to a prosecution motion, the court shall also order immediate action to correct the condition constituting the violation and to maintain the corrected condition in compliance with this Code.

19.16.110 Additional Relief.

Nothing in this chapter shall preclude the City from seeking any other relief, as authorized in other provisions of this Code, or by state or federal law or regulation. Enforcement of this Chapter is supplemental to all other laws adopted by the City.

Section 2. Section 16.09.002 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

16.09.002 Violations.

Violations of this title shall be enforced as set forth in Chapter ~~17.07~~ 19.16 GHMC, Enforcement of Land Use Codes.

Section 3. Section 17.07.004 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.07.004 Duty to enforce.

A. It shall be the duty of the ~~planning director~~ Administrator to enforce this chapter. The ~~planning director~~ Administrator may call upon the police, fire, building, public works or other appropriate city departments to assist in enforcement. As used in this chapter, "~~planning director~~ Administrator" shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the ~~planning director~~ Administrator may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the duties imposed by GHMC Titles 17 and/or 16.

C. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of GHMC Titles 17 and/or 16.

E. No provision of or any term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

Section 4. Section 17.07.006 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.07.006 Investigation and notice of violation.

A. Investigation. The ~~planning director~~ Administrator shall investigate any structure or use which the ~~planning director~~ Administrator reasonably believes does not comply with the standards and requirements of GHMC Titles 17 and/or 16. If the Administrator determines that a violation has occurred, the Administrator shall use the enforcement process found in Chapter 19.16 of the Gig Harbor Municipal Code.

~~B. Notice of Violation. If after investigation the planning director determines that the standards or requirements of GHMC Titles 17 and/or 16 have been violated, the planning director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall contain the following information:~~

- ~~1. A separate statement of each standard, code provision or requirement violated;~~
- ~~2. What corrective action, if any, is necessary to comply with the standards, code provision or requirements;~~
- ~~3. A reasonable time for compliance;~~
- ~~4. A statement that (for zoning code violations), if the violation is not already subject to criminal prosecution, any subsequent violations may result in criminal prosecution as provided in GHMC 17.07.18.~~

~~C. Service. The notice shall be served on the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the planning director makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:~~

- ~~1. Publishing the notice once each week for two consecutive weeks in the city's official newspaper; and~~
- ~~2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.~~

~~D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.~~

~~E. Other Actions May Be Taken. Nothing in this chapter shall be deemed to limit or preclude any action or proceeding pursuant to GHMC 17.07.010, 17.07.012, 17.07.016, 17.07.018, 17.07.020 or 17.07.022.~~

~~F. Optional Notice to Others. The planning director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.~~

~~G. Amendment. A notice or order may be amended at any time in order to:~~

- ~~1. Correct clerical errors; or~~
- ~~2. Cite additional authority for a stated violation.~~

Section 5. Section 17.07.008 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 6. Section 17.07.010 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 7. Section 17.07.012 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 8. Section 17.07.014 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 9. Section 17.07.016 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 10. Section 17.07.018 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 11. Section 17.07.020 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 12. Section 17.07.022 in the Enforcement chapter of the Gig Harbor Municipal Code is hereby repealed.

Section 13. Section 18.08.220 in the Critical Areas chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.08.220 Penalties and Enforcement.

The Administrator shall investigate any potential violation the Administrator reasonably believes has occurred involving critical areas governed by this chapter. If the Administrator determines that a violation has occurred, the Administrator shall use the enforcement process found in Chapter 19.16 of the Gig Harbor Municipal Code.

The community development director shall have authority to enforce this chapter, any rule or regulation adopted, and any permit, order or approval issued pursuant to this chapter, against any violation or threatened violation thereof. The community development director is authorized to issue violation notices and administrative orders, levy fines and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this chapter, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this chapter shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees and expenses in connection with enforcement actions may be recovered as damages against the violator.

B. The community development director may serve upon a person a cease and desist order if any activity being undertaken in a designated critical area or its buffer is in violation of this chapter. Whenever any person violates this chapter or any approval issued to implement this chapter, the community development director may issue an order reasonably appropriate to cease such violation and to mitigate any environmental damage resulting therefrom.

C. Any person who undertakes any activity within a designated critical area or within a required 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 civil penalty as provided for in Chapter 17.07 GHMC.

D. The city's enforcement of this chapter shall proceed according to Chapter 17.07 GHMC.

Section 14. 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 15. 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 of the City of Gig Harbor, this 14th day of November, 2011.

CITY OF GIG HARBOR



Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly Towslee

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela Belbeck

Angela S. Belbeck

FILED WITH THE CITY CLERK: 10/19/11
PASSED BY THE CITY COUNCIL: 11/14/11
PUBLISHED: 11/23/11
EFFECTIVE DATE: 11/28/11
ORDINANCE NO: 1226