

ORDINANCE NO. 1112

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE PROVISION OF WATER AND SEWER SERVICE TO PROPERTY OUTSIDE THE CITY LIMITS, REQUIRING THAT OWNERS OF PROPERTY IN THE CITY'S URBAN GROWTH AREA ANNEX AS A CONDITION TO RECEIVING WATER OR SEWER SERVICE FROM THE CITY, AND REQUIRING THAT EXTENSIONS OUTSIDE THE URBAN GROWTH AREA SATISFY THE CRITERIA IN RCW 36.70A.110(4), SIGN A UTILITY EXTENSION AGREEMENT AND COMPLY WITH ALL REQUIREMENTS OF THIS CHAPTER, EXEMPTING BULK WATER SALES TO NONPROFIT WATER COMPANIES; ADDING A NEW SECTION 13.34.050, REPEALING CHAPTER 13.34 GHMC, AND ADDING A NEW CHAPTER 13.34 GHMC.

WHEREAS, the City of Gig Harbor currently provides water and sewer to property lying outside the City limits in the Urban Growth Area, upon the applicant's compliance with the City's conditions, as set forth in chapter 13.34 GHMC; and

WHEREAS, one of the conditions of such service is a requirement that the applicant sign a utility extension agreement, which is a contract between the property owner and the City, expressing the terms and conditions of such service; and

WHEREAS, one of the terms in this agreement is a requirement to conform the development of the property to the City's development standards, which requirement is reflected in GHMC Section 13.34.060(J); and

WHEREAS, on August 27, 2007, the Washington Court of Appeals rendered a decision on *MT Development LLC v. City of Renton*, 165 P.3d 427 (2007), which held that a city did not have the ability to require that a owner of property lying outside the city conform development of the property to the city's comprehensive plan and zoning code as a condition of receiving sewer service; and

WHEREAS, the Washington Supreme Court has held that the conditions a city may impose on the provision of such service are not limited to those relating to capacity, as long as they are lawful (*MT v. Renton, Yakima County Fire Protection District v. Yakima*, 122 Wn.2d 371, 878 P.2d 245 (1993); and

WHEREAS, the Washington Supreme Court has upheld a city's ability to condition water and sewer service to property outside city limits on the property owner's agreement to sign a no protest annexation agreement, which would require the property owner to sign an annexation petition if one is circulated; and

WHEREAS, at least one other city in Washington has addressed the problem of providing sewer and water service in the UGA by requiring that the property owner annex as a condition of receiving such service (*Master Builders Association of King and Snohomish Counties v. City of Arlington*, CPSGMHB Case No. 04-3-0001, Final Decision and Order, July 14, 2004); and

WHEREAS, the Central Puget Sound Growth Management Hearings Board has determined that such an ordinance is not inconsistent with the Growth Management Act; and

WHEREAS, the City Council believes that requiring that an owner of property in the UGA annex his or her property in order to obtain water and/or sewer service will satisfy the City's concern that the development or redevelopment of property in the UGA is consistent with other development in the City; and

WHEREAS, in those limited circumstances allowing extensions of water and sewer outside the City's UGA, as set forth in RCW 36.70A.110(4), the property owner will not be able to annex, but will be required to sign a utility extension agreement and comply with all of the City's conditions relating to the extension; and

WHEREAS, the City's SEPA Responsible Official issued a threshold determination of nonsignificance for this Ordinance on November 7, 2007; and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of November 13 and November 26, 2007; Now, Therefore,

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

Section 1. Chapter 13.34 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new chapter 13.34 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

CHAPTER 13.34 **WATER AND SEWER SERVICE OUTSIDE CITY LIMITS**

Sections:

- 13.34.020 City's Authority to Provide Service Outside City Limits.**
- 13.34.040 Water and Sewer Service Outside City Limits in the Urban Growth Area.**
- 13.34.050 Contracts for Purchase and Sale of Water Outside City Limits in the Urban Growth Area.**
- 13.34.060 Water and Sewer Service Outside the Urban Growth Area.**

13.34.020 City's Authority to Provide Service Outside City Limits.

A. The City is authorized, pursuant to RCW 35.67.310 and RCW 35.92.200, to provide sewer and water service to property outside the city limits. The City's provision of such service is not mandatory. This chapter establishes the conditions imposed by the City on such service.

B. After designation of the City's urban growth area boundary by the county as contemplated by RCW 36.70A.110, the City is prohibited from annexing territory beyond such boundary (RCW 35A.14.005). The City will provide water and sewer service to property within the urban growth area under the conditions set forth in GHMC Section 13.34.040, and the other provisions of this code, including but not limited to, the application for a water concurrency certificate in chapter 19.10 GHMC.

C. The Growth Management Act allows the City to provide water and sewer services to rural areas outside of the urban growth area boundary only under certain limited circumstances described in RCW 36.70A.110(4). In order to obtain water and sewer service outside of the urban growth area boundary, property owners must comply with all of the requirements set forth in GHMC Section 13.34.060.

13.34.040 Water and Sewer Service Outside City Limits in the Urban Growth Area. Any person or entity owning property outside the City limits within the City's Urban Growth Area must annex their property as a condition of connection to the City's sanitary sewer system or water supply.

13.34.050 Contracts for Purchase and Sale of Water Outside City Limits in the Urban Growth Area. The City Council may enter into contracts for the purchase and sale of water outside the City limits in the UGA with nonprofit water companies, without conforming to GHMC Section 13.34.040. However, the contract between the City and the water company shall not address the rates or connection fees charged, both of which shall be established by ordinance.

13.34.060 Water and Sewer Service Outside the Urban Growth Area.

A. Limitations. Pursuant to RCW 36.70A.110(4), the City may only extend water and sewer outside the Urban Growth Area in those limited circumstances shown to be necessary to protect basic public health and safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.

B. Application. Any person owning property outside the Urban Growth Area and desiring to have their property connected to the City's water supply system or sewer system shall make application at the office of the City Clerk for both a concurrency certificate and the actual connection, on the appropriate form. Every such application shall be made by the owner of the property to be connected and supplied the service, or by his/her authorized agent. The property owner must state fully the purposes for which the water and/or sewer service is required and describe the manner in which the application satisfies the requirements in subsection A above. In addition, the property owner must agree to sign a utility extension agreement with the all of elements set forth in this Section 13.34.060, and conform to the City's regulations concerning water and sewer service set forth in this title, as the same now exists or may be amended in the future. If the City receives such water service application, approves it under the procedures set forth herein, and subsequently issues a water or sewer concurrency certificate, such certificate shall expire within one year of the date of issuance, if the applicant does not pay the required fees and request an actual hook-up or connection to the subject property within that time period.

C. Utility Extension Agreement. Every applicant for water and/or sewer service outside the Urban Growth Area, including but not limited to, municipal corporations or quasi-municipal corporations, such as water, sewer or fire districts, must agree to

sign an agreement with the city, which conditions the provision of the service on the following terms:

1. Agreement to Run with the Property. The agreement shall be recorded against the property in the Pierce County auditor's office, and shall constitute a covenant running with the land. All covenants and provisions of the agreement shall be binding on the owner and all other persons subsequently acquiring any right, title or interest in or to said property.
2. Warranty of Title. The agreement shall be executed by the owner of the property, who shall also warrant that he/she is authorized to enter into such agreement.
3. Costs of Design, Engineering and Construction of Extension. The owner shall agree to pay all costs of design, engineering and construction of the extension, which shall be accomplished to city standards and conform to plans approved by the city public works director. Costs of plan review and construction inspection shall also be paid by the owner.
4. Capacity Commitment Payments. The owner shall agree to pay for the city's reservation of sewer and/or water capacity, which is calculated as a percentage of the connection fee for the sewer and/or water service. Such payments shall be made under the payment schedule determined by the city.
5. Easements and Permits. The owner shall secure and obtain at the owner's sole cost and expense, all permits, easements and licenses necessary to construct the extension.
6. Dedication of Capital Facilities. The owner shall agree to dedicate all capital facilities constructed as part of the water and sewer extension (such as water or sewer main lines, pump stations, wells, etc.), at no cost to the city, upon the completion of construction, approval and acceptance by the city.
7. Connection Charges. The owner shall agree to pay the connection charges set by the city in GHMC 13.04.080(C) and/or 13.32.070 (as these sections now exist or may hereafter be amended), as a condition of connecting to the city water and/or sewer system. Such connection charges shall be calculated at the rate schedules applicable at the time of actual connection.
8. Agreement Not to Protest Annexation. The owner shall provide the city with an irrevocable power of attorney to allow a city representative to sign a petition for annexation on behalf of the property owner or the property owner shall agree to sign a petition(s) for annexation of his/her property when requested to do so by the city.
9. Waiver of Right to Protest LID. If, at the time of execution of the agreement, the city has plans to construct certain improvements that would specially benefit the owner's property, the agreement shall specifically describe the

improvement. The owner shall agree to sign a petition for the formation of an LID or ULID for the specified improvements at the time one is circulated, and to waive his/her right to protest formation of any such LID or ULID.

10. Development of Property to Conform to City Public Works Standards and Utility Regulations. The owner shall agree to comply with all of the requirements of the City's Public Works Standards and Utility Regulations when developing or redeveloping the property subject to the agreement. The property owner shall be required to apply for and obtain a water and/or sewer concurrency certificate prior to making application for a utility extension agreement.

11. Termination for Noncompliance. In addition to all other remedies available to the city for the owner's noncompliance with the terms of the agreement, the city shall have the ability to disconnect the utility, and for that purpose may at any time enter upon the property.

D. Review and Approval of Application. The City Council shall review the application and may, in its sole discretion, allow the extension or expansion of sewer service, if the Council finds that:

1. The application conforms to all elements of this Section, and the applicant has signed a utility extension agreement conforming to subsection C; and

2. The City's Waste Water Treatment Plant and NPDES permit will not be affected by the extension or expansion; and

3. The extension or expansion must be consistent with the goals of the City's sewer comprehensive plan and other applicable law, including, but not limited to, the State Environmental Policy Act (SEPA).

E. Conditions. The Council's approval of any extension or expansion under this Section may be conditioned. Such conditions may include, but are not limited to:

1. Restrictions may be placed on the hours that the City will accept sewage flow from the property;

2. Restrictions may be placed on the amount of sewage flow or water provided to the applicant.

3. The property owner shall have the responsibility to maintain and operate his/her/its own facilities.

Section 3. 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 4. 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 City Council and approved by the Mayor of the City of Gig Harbor this 26th day of November, 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: 11/17/07
PASSED BY THE CITY COUNCIL: 11/26/07
PUBLISHED: 12/5/07
EFFECTIVE DATE: 12/10/07
ORDINANCE NO: 1112