

ORDINANCE NO. 1103

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT (SEPA), AMENDING THE ENVIRONMENTAL REVIEW (SEPA) CHAPTER TO INCORPORATE NEW SEPA RULES ADOPTED BY THE WASHINGTON STATE LEGISLATURE; ADOPTING NEW PROCEDURES FOR REVIEW OF ALL "ACTIONS" UNDER SEPA, ISSUANCE OF THRESHOLD DECISIONS, PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS, PUBLIC NOTICE AND COMMENT; ADDING A NEW SEPA POLICY TO ENSURE THAT POLICE SERVICES ARE MAINTAINED AT AN ACCEPTABLE LEVEL THROUGH THE ADOPTION OF MITIGATION FEES, AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 18.04.010, 18.04.020, 18.04.030, 18.04.040, 18.04.050, 18.04.080, 18.04.090, 18.04.110, 18.04.120, 18.04.140, 18.04.150, 18.04.170, 18.04.180, 18.04.190, 18.04.240, 18.04.260, 18.04.280, 18.04.290 AND 19.04.009(B), ADDING NEW SECTIONS 18.04.053, 18.04.058, 18.04.145, 18.04.160 AND 18.04.210, REPEALING GIG HARBOR MUNICIPAL CODE SECTIONS 18.04.125, 18.04.145, 18.04.160, 18.04.220 AND 18.04.270.

WHEREAS, the Washington State Legislature has adopted new SEPA Rules that have not been incorporated into the City's code chapter on SEPA; and

WHEREAS, the City desires to amend the City's code chapter on SEPA to incorporate new Washington State SEPA Rules; and

WHEREAS, the City desires to add a new SEPA policy to ensure that police services are maintained at an acceptable level through the adoption of mitigation fees; and

WHEREAS, the City's SEPA Responsible Official has determined that the adoption of this Ordinance is categorically exempt under WAC 197-11-800(19) as an ordinance relating to procedures only; and

WHEREAS, on September 10, 2007, the Gig Harbor City Council held a first reading of this Ordinance; and

WHEREAS, on September 24, 2007, this Ordinance was considered by the Gig Harbor City Council in a second reading; Now, Therefore,

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

Section 1. Section 18.04.010 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.010 Authority.

The city of Gig Harbor adopts ~~the ordinance codified in this chapter~~ under the State Environmental Policy Act (SEPA), RCW 43.21C.120 and the SEPA rules WAC 197-11-904, chapter 197-11 WAC. This ordinance contains the City's SEPA procedures and policies. The SEPA rules contained in Chapter 197-11 WAC must be used in conjunction with this chapter.

Section 2. Section 18.04.020 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.020 Adoption by reference.

The city adopts the following sections of Chapter 197-11 WAC, ~~as now existing or hereinafter amended,~~ by reference:

WAC

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review – Reliance on existing plans, laws, and regulations.
- ~~197-11-164 Planned actions – Definition and criteria.~~
- ~~197-11-168 Ordinances or resolutions designating planned actions – Procedures for adoption.~~
- ~~197-11-172 Planned actions – Project review.~~
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- ~~197-11-225 Purpose, policy applicability and definitions.~~
- 197-11-228 Overall SEPA/GMA integration procedures.
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 SEPA/GMA Integration procedures for preliminary planning, environmental analysis and expanded scoping.
- 197-11-235 Integrating documents.
- 197-11-238 Monitoring.
- 197-11-250 SEPA/Model Toxics Control Act Integration.

197-11-253 SEPA lead Agency for MTCA actions.

197-11-256 Preliminary evaluation.

197-11-259 Determination of nonsignificance and EIS for MTCA remedial actions.

197-11-265 Early scoping for MTCA remedial actions.

197-11-268 MTCA interim actions.

Section 3. Section 18.04.030 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.030 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799 and 197-11-220, when used in this chapter the following terms shall have the following meanings, unless the content indicates otherwise:

A. "Department" means any division, ~~subdivision or organizational unit, or department~~ of the city ~~established by ordinance, rule or order.~~

B. "Ordinance" or "chapter" means the ordinance, resolution or other procedure used by the City to adopt regulatory requirements.

C. "Early notice" means the City's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal (mitigated determination of nonsignificance (MDNS) procedures).

~~B~~ D. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology.

Section 4. Section 18.04.040 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.040 Designation of responsible official.

A. For those proposals for which the city is a lead agency, the responsible official shall be the planning director or such other person as the director may designate in writing.

B. For all proposals for which the city is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS) and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA rules that have been adopted by reference in this chapter.

Section 5. Section 18.04.050 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.050 Lead agency determination and responsibilities.

A. The SEPA responsible official ~~or the department receiving an application for or initiating a proposal that involves a nonexempt action~~

shall determine the lead agency for ~~that any application for or initiation of a proposal that involves a nonexempt action, as provided in under WAC 197-11-050 and WAC 197-11-922 through 197-11-940, unless the lead agency has been previously determined or the department is aware that if another department or agency is in the process of determining the lead agency.~~

B. When the City is the lead agency for a proposal, the SEPA Responsible Official shall supervise compliance with the necessary threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

~~B.C.~~ C. When the city is not the lead agency for a proposal, all departments of the city shall use and consider as appropriate either the determination of nonsignificance (DNS) or the final EIS of the lead agency in making decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency unless the city determines a supplemental environmental review is necessary under WAC 197-11-600 required under WAC 197-11-600. In some cases, the City may conduct supplemental environmental review under WAC 197-11-600.

~~C.D.~~ D. If the city, or any of its departments, receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 14 fifteen days of receipt of the determination or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 14-day fifteen day time period. Any such petition on behalf of the city may be initiated by the SEPA responsible official or any department.

~~D.E.~~ E. The responsible official is Departments of the city are authorized to make agreements as to lead agency status or shared lead agency's duties for a proposal under WAC 197-11-942 and 197-11-944; PROVIDED, that the responsible official and any department that will incur responsibilities as the result of such agreement approve the agreement.

~~E.F.~~ F. The responsible official Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify other agencies with jurisdiction over the proposal.

Section 6. A new Section 18.04.053 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.053 Transfer of lead agency status to a state agency.

For any proposal for a private project where the City would be the lead agency and for which one or more state agencies have jurisdiction, the City's responsible official may elect to transfer the lead agency duties to a state agency. The state agency with jurisdiction appearing first on the

priority listing in WAC 197-11-936 shall be the lead agency and the City shall be an agency with jurisdiction. To transfer lead agency duties, the City's responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official of the City shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal.

Section 7. A new Section 18.04.058 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.058 Additional timing considerations.

A. For nonexempt proposals, the DNS, MDNS or the draft EIS for the proposal shall accompany the City's staff recommendation to the appropriate advisory body, such as the planning commission or the hearing examiner.

B. This subsection applies to those permits that are not subject to the notice of application requirements in Title 19 and RCW 36.70B.110. If the City's only action on a proposal is a decision on a building permit or other license/permit that requires detailed project plans and specifications, the applicant may request in writing that the City conduct environmental review prior to the submission of the detailed plans and specifications.

Section 8. Section 18.04.080 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.080 Categorical exemptions – Adoption by reference.

The city adopts by reference the following rules for categorical exemptions, as supplemented by this chapter, including GHMC 18.04.090 (Use of exemptions) ~~of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference, as supplemented in this chapter:~~

WAC

197-11-800 Categorical exemptions.

197-11-880 Emergencies.

197-11-890 Petitioning DOE to change exemptions.

Section 9. Section 18.04.090 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.090 Categorical exemptions – ~~Determination~~ Use of exemptions.

A. ~~When the city~~ Each department within the city that receives an application for a license, permit, or, in the case of governmental proposals, a the department ~~initiates~~ initiating a the proposal, ~~the responsible official~~ shall determine whether the license and/or the proposal is exempt from environmental review ~~under this chapter.~~ The department's determination

that a proposal is exempt shall be final and not subject to administrative appeal. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal. The City shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the ~~responsible official~~ department shall make certain the proposal is properly defined and shall identify the governmental license or permit required (WAC-197-11-070). If a proposal includes exempt and nonexempt actions, the ~~responsible official~~ department shall determine the lead agency even if the license application that triggers the consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The city shall not give authorization for:
 - a. Any nonexempt action;
 - b. Any action that would have an adverse environmental impact;

or

c. Any action that would limit the choice of ~~reasonable~~ alternatives;

2. The city may withhold approval of an exempt action ~~any permit, application or proposal, the basis of which is an exempt action~~ that would lead to modification of the physical environment, when such modification would serve no purpose if the nonexempt actions were not approved; and

3. The city may withhold approval of exempt actions ~~any permit, application or proposal, the basis of which is an exempt action~~ that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if the nonexempt actions were not approved.

4. A planned action as defined in RCW 43.21C.031(2) does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.

Section 10. Section 18.04.110 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.110 Threshold determinations – Environmental checklist.

A. Except as provided in subsection (D) of this section, a ~~A~~ completed environmental checklist (or a copy), in a form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate or other approval not specifically ~~exempted~~ by this chapter, except that a checklist is not needed if the City and applicant agree that an EIS is required, SEPA has been completed, or compliance has been initiated by another agency. The checklist shall be the form of WAC 197-11-960 with such additions that may be required by the responsible official in accordance with WAC 197-11-906(4). ~~The City shall use the~~

environmental checklist to determine the lead agency, and if the City is the lead agency, for determining the responsible official and for making the threshold determinations.

~~B. A checklist is not needed if the city and the applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency or adoption of a previous document.~~

CB. For private proposals, the applicant is required to complete the environmental checklist. The city may provide assistance as necessary. For city proposals the department initiating the proposal shall complete the environmental checklist for that proposal.

DC. The city may ~~decide to~~ require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if any either of the following occurs:

1. The city has technical information on a question or questions that is unavailable to the private applicant; or

2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

The applicant shall pay to the city the actual costs of providing the information for the environmental checklist.

D. For projects submitted as planned actions under WAC 197-11-164, the City shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance; or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a thirty-day review prior to use.

~~E. The applicant shall pay to the city the actual costs of providing information under subsection (DC)(2) of this section.~~

Section 11. Section 18.04.120 of the Gig Harbor Municipal Code is hereby amended, to read as follows

18.04.120 ~~Threshold determinations~~ – Mitigated DNS

A. As provided in this section and in WAC 197-11-350, ~~t~~The responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

1. Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

2. Precede the city's actual threshold determination for the proposal.

~~C. The responsible official's response to the request for early notice shall~~ official should respond to the request for early notice within 15 working days. The response shall:

1. Be in writing;

~~4~~2. State whether the city currently considers issuance of a DS likely and, if so, indicate the general or specific areas of concern that are leading the city to consider a DS; and

~~2~~ 3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, and may revise the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, the City should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

~~D.~~ E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and should make the determination within fifteen days of received the changed or clarified proposal.

1. If the city indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance (DNS), under WAC 197-11-340(2) if the city determines that no additional information or mitigation measures are required.

2. If the city indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the city shall make the threshold determination, issue a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures, clarifications, changes or conditions must be in writing and must be specific.

4. Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

~~E.~~ F. The city shall not act upon a proposal for which a mitigated DNS has been issued until the 14-day comment and public notice period has expired for 14 days after the date of issuance; provided, that the requirements of this section shall not apply to a DNS issued pursuant to the optional DNS process described in GHMC 18.04.123.

~~F. Any nonexempt permit or proposal may be conditioned or denied under SEPA, subject to the limitations in WAC 197-11-660 and GHMC 18.04.210.~~

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the ~~licensing~~ permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any matter specifically prescribed by the city. ~~Failure to comply~~

~~with the designated mitigation measures shall be grounds for suspension and/or revocation of any license issued.~~

H. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) relating to the withdrawal of a DNS.

I. The city's written response under subsection ~~C~~(B) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

Section 12. Section 18.04.125 of the Gig Harbor Municipal Code is hereby repealed.

Section 13. Section 18.04.140 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.140 EIS – Preparation.

A. Responsible Official's Responsibilities. Preparation of draft and final EISs and SEISs shall be under the direction of the responsible official. Before the city issues an EIS or SEIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by the City staff, the applicant, or by a consultant selected by the City, as determined by the responsible official. If the responsible official requires an EIS for a proposal and determines that someone other than the City will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the City's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

~~B~~C. Time Limit. Subject to delays caused by the applicant's failure to provide needed information and other delays beyond the city's control, draft and final EISs will be completed within one year of the date of the declaration of significance, unless the city and the applicant agree in writing to a different estimated time period for completion.

~~C~~D. Requirement for Additional Information. The city may require an applicant to provide additional information which the city does not possess, including information which must be obtained by specific investigations. ~~This provision is not intended to expand or limit an applicant's other obligations under WAC 197-11-100, or other provisions of regulation, statute or ordinance. An applicant shall not be required to produce information under this provision which is not specifically required by this chapter, nor is the applicant relieved of the duty to supply any other~~

information required by statute, regulation or ordinance. The applicant shall not be required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the City may request under another ordinance or statute.)

DE. Fees.

1. For the purpose of reimbursing the city for necessary costs and expenses relating to its compliance with the SEPA rules and this chapter in connection with private projects, the following schedule of fees are established (in addition to the fees in the city's fee resolution):

a. For a threshold determination which requires information in addition to that contained in or accompanying the environmental checklist, a fee in an amount equal to the actual costs and expenses incurred by the city in conducting any studies or investigations necessary to provide such information;

b. For all private projects requiring an EIS for which the city is the lead agency and for which the responsible official determines that the EIS shall be prepared by the employees of the city, or that the city will contract directly with a consultant or consultants for the preparation of an EIS, a fee in an amount equal to the actual costs and expenses incurred by the city in preparing the EIS. Such fee shall also apply when the city determines that the applicant may prepare the EIS, and the responsible official determines that substantial revisions or reassessing of impacts must be performed by employees of the city to ensure compliance with the provisions of the SEPA guidelines and this chapter.

2. If the responsible official determines that an EIS is required, and that the EIS shall be prepared by employees of the city or by a consultant or consultants retained by the city, or that the applicant-prepared EIS shall be substantially rewritten by employees of the city, the private applicant shall be advised by the responsible official of the estimated costs and expenses of preparing or rewriting the EIS prior to actual preparation or rewriting, and the private applicant shall post a bond or otherwise insure payment of such costs and expenses. A consultant or consultants may be recommended by the applicant. The final decision to hire a consultant or consultant shall be made by the city council.

3. All fees owed the city under this section shall be paid in full by the private applicant prior to final action by the city on the private project. Any fee owed the city under this subsection D shall be paid by the private applicant prior to the initiation of actual preparation of an EIS (if required) or actual rewriting of an applicant-prepared EIS by the city or its consultant(s). For all EISs involving multiple applicants, the cost of preparation shall be divided among the applicants according to the nature, amount and type of work to be performed. The city shall ask the EIS consultant to estimate the costs related to the portion of the EIS associated with each application. The city shall make the final decision on the costs to be billed each applicant, regardless of whether the EIS is

prepared by a consultant or the city. If a private applicant disputes the amount of the fee, the fee may be paid under protest and without prejudice to the applicant's right file a claim and bring an action to recover the fee.

Section 14. Section 18.04.145 of the Gig Harbor Municipal Code is hereby repealed.

Section 15. A new Section 18.04.145 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.145 Additional elements to be covered by EIS.

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determinations or perform any other function or purpose under this chapter: economy; social policy analysis and cost-benefit analysis.

Section 16. Section 18.04.150 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.150 ~~EIS~~ — Commenting – Adoption by reference.

The city adopts the following sections of ~~Chapter 197-11 WAC, as now existing or hereinafter amended,~~ by reference as supplemented in this chapter:

WAC

197-11-500 Purpose of this part.

197-11-502 Inviting comment.

197-11-504 Availability and cost of environmental documents.

197-11-508 SEPA register.

197-11-510 Public notice.

197-11-535 Public hearings and meetings.

197-11-545 Effect of no comment.

197-11-550 Specificity of comments.

197-11-560 FEIS response to comments.

197-11-570 Consulted agency costs to assist lead agency.

Section 17. Section 18.04.160 of the Gig Harbor Municipal Code is hereby repealed.

Section 18. A new Section 18.04.160 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.160 Public notice.

A. Whenever possible, the City shall integrate public notice required under this Section with existing notice procedures for the City's nonexempt permit(s) or approval(s) required for the proposal.

B. Whenever the City issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the City shall give public notice as follows:

1. If public notice is required for a nonexempt permit, the notice shall state whether a DS or DNS has been issued and when comments are due;

2. If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

3. If no public notice is otherwise required for the permit or approval, the City shall give notice of the DNS or DS by:

a. Posting on the property or publication in the official newspaper of the city of Gig Harbor for site-specific proposals;

b. Mailing to property owners within 300 feet for site specific proposals.

4. Whenever the City issues a DS under WAC 197-11-360(3), the City shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

C. Whenever a public hearing is held on a nonexempt permit, notice of the threshold determination shall be given. Such notice shall precede the hearing by at least 15 days. Notice will be given as follows:

1. Posting on the property or publication in the official newspaper of the city of Gig Harbor for site-specific proposals;

2. Mailing to property owners within 300 feet for site specific proposals.

D. If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in GHMC 18.04.123 and WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

E. Whenever the City issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt license; and the following:

a. Posting on the property or publication in the official newspaper of the city of Gig Harbor for site-specific proposals;

b. Mailing to property owners within 300 feet for site specific proposals.

F. Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).

G. The City may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

Section 19. Section 18.04.170 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.170 Designation of official to perform consulted agency responsibilities for the city.

A. The responsible official shall be responsible for preparation of written documents for the city in response to a consultation request prior to a threshold determination, participation in scoping and reviewing of a draft EIS.

B. The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city.

Section 20. Section 18.04.180 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.180 Using existing environmental documents – Adoption by reference

The city adopts the following sections for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the City's own environmental compliance of Chapter 197-11 WAC as now existing or hereinafter amended, by reference:

WAC

197-11-164 Planned actions – Definitions and criteria.

197-11-168 Ordinances or resolutions designating planned actions – procedures for adoption.

197-11-172 Planned actions – project review

197-11-600 When to use existing environmental documents.

197-11-610 Use of NEPA documents.

197-11-620 Supplemental environmental impact statements.

197-11-625 Addenda – Procedures.

197-11-630 Adoption – Procedures.

197-11-635 Incorporation by reference – Procedures.

197-11-640 Combining documents.

Section 21. Section 18.04.190 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.190 SEPA decisions – Adoption by reference.

The city adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference:

WAC

197-11-650 Purpose of this part.

197-11-655 Implementation.

197-11-660 Substantive authority and mitigation.

197-11-680 Appeals.

~~197-11-700 Definitions.~~

Section 22. A new Section 18.04.210 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.210 Substantive authority.

A. The policies and goals set forth in this ordinance are supplementary to those in the existing authorization of the City.

B. The City may attach conditions to a permit or approval for a proposal, so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The City has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection (D) of this section and cited in the license or other decision document.

C. The City may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in writing the decision document.

D. The City designates and adopts by reference the following policies as the basis for the City's exercise of authority pursuant to this section:

1. The City shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources;

2. The City recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. The City adopts by reference the policies in the following City codes, ordinances, resolutions and plans, as they now exist or may be hereafter amended, as a possible basis for the exercise of substantive SEPA authority in the conditioning or denying of proposals:

a. Chapter 43.21C RCW – State Environmental Policy Act.

b. GHMC Title 5 – Business Licenses and Regulations.

c. GHMC Title 6 – Animals.

d. GHMC Title 8 – Health and Safety.

e. GHMC Title 10 – Vehicles and Traffic.

f. GHMC Title 12 – Streets and Sidewalks.

g. GHMC Title 13 – Water and Sewers.

h. GHMC Title 15 – Buildings and Construction.

i. GHMC Title 16 – Subdivision.

j. GHMC Title 17 – Zoning.

k. GHMC Title 19 – Administration of Development

Regulations.

l. The City of Gig Harbor Comprehensive Plan.

m. The City of Gig Harbor Shoreline Master Program.

n. The City's Six Year Road Program.

o. The City's Comprehensive Water Plan.

p. The City's Comprehensive Sewer Plan.

q. Chapter 18.08 GHMC – Critical Areas.

r. Chapter 18.10 GHMC – Flood Hazard Construction

Standards

r. City of Gig Harbor Public Works Standards.

s. City of Gig Harbor Storm Water Management Ordinance.

t. City of Gig Harbor Concurrency Ordinance.

4. The City establishes the following additional policies:

a. Schools. In order to ensure that adequate school facilities are available to serve new growth and development and to ensure that

new growth and development provides mitigation for direct impacts on school facilities identified by the school district as a consequence of proposed development, the City may impose school mitigation fees, all as provided in RCW 82.02.020.

b. Police. In order to ensure that the City's acceptable level of service for police response is not diminished as a result of new growth and development and to ensure that new growth and development provides mitigation for the direct impacts on the City's Police Department that are identified by the City as a consequence of proposed development, the City may impose Police and Emergency Response mitigation fees, all as provided in RCW 82.02.020.

Section 23. Section 18.04.220 of the Gig Harbor Municipal Code is hereby repealed.

Section 24. Section 18.04.240 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.240 Notice/statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided by WAC 197-11-990. The notice shall be published by the City Clerk or County Auditor, applicant or proponent, pursuant to RCW 43.21C.080.

Section 25. Section 18.04.260 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.260 ~~Compliance with SEPA~~ Agency Compliance – Adoption by reference.

The city adopts the following sections of Chapter 197-11 WAC, ~~as now existing or hereinafter amended~~, by reference, as supplemented in this chapter:

WAC

197-11-900 Purpose of this part.

197-11-902 Agency SEPA policies.

197-11-904 Agency SEPA procedures.

197-11-906 Content and consistency of agency procedures.

197-11-908 Critical areas.

197-11-910 Designation of responsible official.

197-11-912 Procedures of consulted agencies.

197-11-914 SEPA fees and costs.

197-11-916 Application to ongoing actions.

197-11-917 Relationship to chapter 197-10 WAC.

197-11-918 Lack of agency procedures.

- 197-11-920 Agencies with environmental expertise.
- 197-11-922 Lead agency rules.
- 197-11-924 Determination the lead agency.
- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.

Section 26. Section 18.04.270 of the Gig Harbor Municipal Code is hereby repealed.

Section 27. Section 18.04.280 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.280 Fees.

The city shall require fees as provided for under ~~Chapter 3.30 GHMC~~ chapter 3.40 GHMC for its activities in accordance with the provisions of this chapter, as supplemented in this chapter.

Section 28. Section 18.04.290 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

18.04.290 Forms – Adoption by reference.

The city adopts the following forms and sections of ~~Chapter 197-11 WAC, as now existing or hereinafter amended,~~ by reference:

WAC

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.

197-11-990 Notice of action.

Section 29. Subsection 19.05.009(B) of the Gig Harbor Municipal Code is hereby amended, to read as follows:

19.05.009 Notice of final decision.

* * *

B. In calculating the 120-day period for issuance of the notice of final decision, the following periods shall be excluded:

1. Any period during which the applicant has been requested by the director to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the director notifies the applicant of the need for additional information until the earlier of the date the director determines that the additional information provided satisfies the request for information, or 14 days after the date the additional information is provided to the city;

2. If the director determines that the information submitted is insufficient, the applicant shall be informed of the particular insufficiencies and the procedures set forth in subsection (B)(1) of this section for calculating the exclusion period shall apply;

3. Any period during which an environmental impact statement (EIS) is being prepared pursuant to Chapter 43.21C RCW and GHMC Title 18. The time period for preparation of an EIS shall be governed by GHMC 18.04.140~~(B)~~ (C);

4. Any period for consideration and issuance of a decision for administrative appeals of project permits, which shall be not more than 90 days for open record appeals and 60 days for closed record appeals, unless a longer period is agreed to by the director and the applicant;

5. Any extension of time mutually agreed to by the director and the applicant.

* * *

Section 30. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be unconstitutional or invalid 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 31. 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 Gig Harbor City Council and the Mayor of the City of Gig Harbor this 27th day of September, 2007.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: _____
CAROL A. MORRIS, CITY ATTORNEY

FILED WITH CITY CLERK: 09/05/07
ADOPTED: 09/24/07
DATE OF PUBLICATION: 10/03/07
EFFECTIVE DATE: 10/08/07