

ORDINANCE NO. 1042

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE STATE ENVIRONMENTAL POLICY ACT, CHANGING THE APPEAL PROCEDURES FOR AN ADMINISTRATIVE APPEAL OF CERTAIN SEPA DECISIONS, TO BE CONSISTENT WITH TITLE 19 FOR PROCESSING OF PROJECT PERMIT APPLICATIONS, TO ELIMINATE AN UNNECESSARY APPEAL OF THE HEARING EXAMINER'S SEPA DECISION TO THE CITY COUNCIL, AND TO DIRECT ANY APPEAL OF A SEPA DECISION ON A LEGISLATIVE DECISION TO THE CITY COUNCIL.

WHEREAS, the State Environmental Policy Act (chapter 43.21C) allows the City to adopt procedures for administrative appeals of certain SEPA decisions; and

WHEREAS, the City has provided an appeal section in its SEPA Ordinance (Section 18.04.230); and

WHEREAS, the current appeal procedures are out-of-date because they allow an appeal to the City Council of the Hearing Examiner's decision on SEPA mitigation and project permit denials, even though Title 19 provides that the Hearing Examiner makes the final decision on most project permit applications; and

WHEREAS, the current procedures also require the Hearing Examiner to hold an appeal hearing and make the final decision on SEPA threshold determinations and EIS adequacy, regardless of whether the underlying action is a project permit application or a legislative decision (like a comprehensive plan amendment); and

WHEREAS, the City Council should instead be holding the appeal hearing and making the final decision on SEPA decisions relating to legislative action, because the City Council will be making the final decision on the legislative action; and

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

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of April 24, 2006 and during its regular City Council meeting of May 8, 2006; Now, Therefore,

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

Section 1. Section 18.04.230 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Section 18.04.230 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

18.04.230 Appeals.

The City establishes the following administrative appeal procedures under RCW 43.21C.075 and WAC 197-110-680:

A. Appealable Decisions.

1. Only the following decisions may be administratively appealed under this chapter: (a) Final threshold determination; (2) mitigation or failure to mitigate in the SEPA decision; (3) Final EIS; and (4) project denials.

2. If the City does not provide for a hearing or appeal on the underlying action/permit, then the SEPA administrative appeal on the decisions listed in Subsection 18.04.230(A)(1) above shall be the only hearing and appeal allowed on the underlying action/permit.

B. Notice of Decision.

1. In the Notice of Decision issued by the City pursuant to GHMC 19.05.009 and for every decision for which an appeal is available in this Section, the SEPA Responsible Official shall give official notice of the date and place for commencing an appeal. The notice shall include:

a) Notice that the SEPA issues must be appealed within the time limit set by statute or ordinance for appealing the underlying governmental action;

b) The time limit for commencing the appeal of the underlying governmental action and SEPA issues, and the statute or ordinance establishing the time limit;

c) Where the appeal may be filed.

2. Written notice shall be provided to the applicant, all parties to any administrative appeal and all persons who have requested notice of decisions concerning the project. Such notice may be appended to the permit, the decision documents, the SEPA compliance documents or may be printed separately.

C. Timing of Appeal. The appeal shall take place prior to the City's final decision on a proposed action. However, the SEPA appeal hearing may be consolidated with any other hearing on the underlying permit or action.

D. Number of Appeals: Only one administrative appeal to the City is allowed of the decisions listed in Subsection 18.04.170(A) above.

E. Consolidated Appeals. If the underlying action/permit requires a hearing, any SEPA appeal shall be consolidated with the hearing or appeal of the underlying action/permit into one simultaneous hearing, with the exception of the following:

1. An appeal of a determination of significance (DS);
2. An appeal of a procedural determination made by the City when the City is a project proponent, or is funding a project, and chooses to conduct its review under SEPA, including any appeals of its procedural determinations, prior to submitting an application for a project permit. Subsequent appeals of substantive determinations by an agency with jurisdiction over the proposed project shall be allowed under the SEPA appeal procedures of the agency with jurisdiction;
3. An appeal of a procedural determination made by the City on a nonproject action; and
4. An appeal to the City Council under RCW 43.21C.060.

F. Timing of Appeal.

1. *SEPA Decision issues at the same time as underlying action*. An appeal of a SEPA decision that issued at the same time as the decision on a project action shall be filed within fourteen days (14) days after issuance of a notice of decision under GHMC 19.05.009 (or RCW 36.70B.130), or after notice that a decision has been made and is appealable.

2. *SEPA Decision allows Public Comment*. For a DNS or MDNS for which public comment is required (under this chapter) the appeal period shall be extended for an additional seven days.

3. *SEPA Threshold Decision issues prior to decision on underlying action*. An appeal of a threshold decision issued prior to a

decision on a project action shall be filed within fourteen (14) days after notice that the decision has been made and is appealable.

G. Consideration of SEPA Responsible Official's Decision. Procedural determinations made by the SEPA Responsible Official shall be entitled to substantial weight by the hearing examiner or city council in an appeal.

H. Administrative Record. An administrative record of the appeal must be provided, and the record shall consist of the following:

- a. Findings and conclusions;
- b. Testimony under oath; and
- c. A taped or written transcript. (The City may require that the appellant provide an electronic transcript.)

I. Exhaustion of Administrative Remedies. The City's administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue for which the City allows an appeal in this Section.

J. Content of Appeal. Every appeal must be in writing, and must include the following:

1. The applicable appeal fee, as established by Resolution of the City Council;
2. Appellant's name, address and phone number;
3. A statement describing the appellant's standing, or why the appellant believes that he or she is aggrieved by the decision appealed from;
4. Identification of the application and decision which is the subject of the appeal;
5. Appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to the facts in the record;
6. The specific relief sought;
7. A statement that the appellant has read the appeal and believes the content to be true, followed by the appellant's signature.

K. Timeliness of Appeals. On receipt of a written notice of appeal, the SEPA Responsible Official shall forward the appeal to the hearing examiner or city council (whichever is the hearing officer/body on the appeal), who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on an underlying project permit. A written decision will issue if the appeal is untimely and the appeal will not proceed.

L. Hearing Examiner Appeals.

1. *Jurisdiction.* All administrative appeals relating to project permit applications or any type of quasi-judicial or ministerial development applications that are not appealable to the City Council (pursuant to GHMC Section 19.01.003) shall be heard by the Hearing Examiner.

2. *Hearing.* The Hearing Examiner shall hold an open record public hearing on the appeal, as provided in chapter 19.05 GHMC.

3. *Date for Issuance of Decision.* The hearing examiner shall issue a decision on the appeal within the time period set forth in GHMC Section 19.05.008, unless a longer period is agreed to in writing by the applicant and hearing examiner.

4. *Appeals of Hearing Examiner's Decision.* The hearing examiner's decision on the timeliness of an appeal within his/her jurisdiction, and any other appeals allowed under this subsection within his/her jurisdiction shall be the final decision of the City. The hearing examiner's decision shall state that any appeal of the final decision shall be filed in Pierce County Superior Court (pursuant to chapter 36.70C RCW), or the Shorelines Hearings Board.

M. City Council Appeals.

1. *Jurisdiction.* The City Council shall hear all administrative appeals relating to legislative actions and applications. In addition, the City Council shall hear appeals relating to any other applications that are appealable to the City Council (pursuant to GHMC Section 19.01.003).

2. *Hearing.* For all legislative actions and applications, the City Council shall hold an open record hearing (chapter 19.05 GHMC). For any appeals relating to applications appealable to the City Council (pursuant to GHMC Section 19.01.003), the City Council shall hold a closed record hearing (chapter 19.06 GHMC).

3. *Record on Appeal.* There are no restrictions on the evidence and testimony received by the Council for an appeal relating to legislative actions and applications. For any other type of appeal, the City Council shall follow the requirements of chapter 19.06 GHMC for closed record appeals.

4. *Appeals of City Council's Decision.* The City Council's decision on the timeliness of an appeal within its jurisdiction and any other appeals allowed under this subsection within its jurisdiction shall be the final decision of the City. The City Council's decision shall state that any appeal of the final decision may be filed in Pierce County Superior Court within 21 days of issuance or the Growth Management Hearings Board.

N. Judicial Appeals.

1. When SEPA applies to a decision, any judicial appeal of that decision potentially involves both those issues pertaining to SEPA

and those which do not. This Section and RCW 43.21C.075 establish the time limits for raising SEPA issues, but existing statutes of limitation control the appeal of non-SEPA issues.

2. Appeals of the City's final decision shall be filed in superior court, but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under chapter 43.21C RCW shall without exception be of the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit.

Section 2. 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 3. 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 8th day of May, 2006.

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: 04/20/06
PASSED BY THE CITY COUNCIL: 5/8/06
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