

ORDINANCE NO. 969

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO CONCURRENCY MANAGEMENT, ELIMINATING CERTAIN EXEMPTIONS FROM WATER AND TRAFFIC CONCURRENCY MANAGEMENT RELATING TO PUBLIC TRANSPORTATION FACILITIES, PUBLIC PARKS AND RECREATIONAL FACILITIES AND PUBLIC LIBRARIES, IN ACCORDANCE WITH RECENT CASE LAW; ELIMINATING THE EXEMPTION FOR DEVELOPMENT OR CHANGES IN USE INITIATED PRIOR TO OR DURING 1999, ALL OF WHICH HAVE NOW BEEN COMPLETED; ELIMINATING THE 15 NEW P.M. PEAK HOUR TRIP THRESHOLD FOR TRANSPORTATION FACILITIES; AMENDING GIG HARBOR MUNICIPAL CODE SECTION 19.10.003.

WHEREAS, the Growth Management Act requires that the City of Gig Harbor adopt a concurrency ordinance for transportation facilities “which prohibits development approval if the development causes the level of service on a locally-owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of the development are made concurrent with the development” (RCW 36.70A.070(6)(b); and

WHEREAS, the City has adopted concurrency regulations for water and transportation (chapter 19.10 of the Gig Harbor Municipal Code); and

WHEREAS, the City’s code currently exempts public transportation facilities, public parks and recreational facilities and public libraries from the concurrency requirements (GHMC Section 19.10.003(C)); and

WHEREAS, the Washington Court of Appeals recently determined that “under the clear and plain language of RCW 36.70A.070(6)(b), the City cannot create exemptions to

its concurrency ordinance." *Bellevue v. East Bellevue Community Municipal Corporation*, 119 Wn. App. 405, 81 P.3d 148 (2003); and

WHEREAS, although the parties in this case have petitioned the Washington Supreme Court for review, the Supreme Court has not yet determined whether it will accept review; and

WHEREAS, even if the Washington Supreme Court accepts review, a final decision will not likely be immediately forthcoming; and

WHEREAS, in Section 19.10.003(A), there is an exemption for construction or change in use initiated pursuant to a development permit issued prior to the effective date of Ordinance 818, which was the Concurrency Ordinance, adopted in 1999; and

WHEREAS, all construction or changes in use initiated pursuant to a development permit issued prior to 1999 has long since been complete, and this exemption is no longer required; and

WHEREAS, the City Council desires to conform its concurrency requirements to this recent decision; Now, Therefore:

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

Section 1. Section 19.10.003 of the Gig Harbor Municipal Code is hereby amended to read as follows:

Section 2. Section 13.02.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.10.003 Exempt development.

A. Development Permit Issued Prior to Effective Date of this Chapter.

~~All construction or change in use initiated pursuant to a development permit issued prior to the effective date of the ordinance codified in this chapter shall be exempt from the requirements of this chapter; provided however, that no development permit shall be extended except in conformance with this chapter. If the city determines that a previously issued development permit has lapsed or expired, pursuant to the applicable development regulations, then no subsequent development permit shall be issued except in accordance with this chapter.~~

A. DeMinimis Development. After the effective date of the ordinance codified in this chapter, No development activity (as defined in Chapter 19.14 GHMC) shall be exempt from the requirements of this chapter unless specifically exempted in subsection C of this section. the permit is listed below. C. Exempt permits. The following types of permits are not subject to exempt from the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on road facilities or water capacity in the City's water system:

1. Administrative interpretations;
2. Sign permit;
3. Street vacation;
4. Demolition permit;
5. Street Use permit;
6. Interior alterations with no change of use;
7. Excavation/clearing permit;
8. Hydrant use permit;
9. Right-of-way permit;
10. Single-family remodeling with no change of use;
11. Plumbing permit;
12. Electrical permit;
13. Mechanical permit;
14. Excavation permit;
15. Sewer connection permit;
16. Driveway or street access permit;
17. Grading permit;
18. Tenant improvement permit;
19. Fire Code permit;
20. Design Review approval.

Notwithstanding the above, if any of the above permit applications will generate 45-any new p.m. peak hour trips or increase water consumption, such application shall not be exempt from the requirements of this chapter.

2. The portion of any project used for any of the following purposes is exempt from the requirements of this chapter:

- a. ~~Public transportation facilities;~~
- b. ~~Public parks and recreational facilities;~~
- c. ~~Public libraries.~~

~~Notwithstanding the exemptions hereunder provided, the traffic resulting from an exempt use shall nonetheless be included in computing background traffic for any nonexempt project. In addition, the water capacity used by an exempt project shall be included in the computations for the capacity remaining in the city's water system.~~

B. D. Threshold for Other Exempt Permits.

1. Traffic. This chapter shall apply to all development applications for development or redevelopment if the proposal or use will generate any more than 15 new p.m. peak hour trips.
2. Water. This chapter shall apply to all development applications for development or redevelopment if the proposal or use requires water from the city's water system. In addition, this chapter shall apply to existing developments to the extent that the property owner requires water for a use not disclosed on a previously submitted water service application under GHMC 13.02.030 or a previously submitted application for a capacity reservation certificate.
3. If the permit application will generate more than 15 new p.m. peak hour trips, a transportation capacity evaluation application and report shall be required in conformance with Chapter 19.10 of the Gig Harbor Municipal Code.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be 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, sentence, clause or phrase of this ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

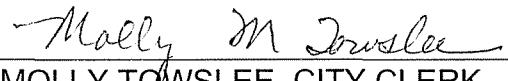
Section 4 Effective Date. This Ordinance shall take effect and be in full force after publication of the approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor
this 13th day of September, 2004.

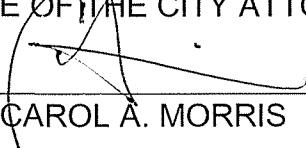
CITY OF GIG HARBOR


GRETCHEN WILBERT, 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: 8/18/04
PASSED BY THE CITY COUNCIL: 9/13/04
PUBLISHED: 9/22/04
EFFECTIVE DATE: 9/27/04
ORDINANCE No. 969