

ORDINANCE NO. 966

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO WATER AVAILABILITY FOR NEW DEVELOPMENT, ADOPTING FINDINGS AND CONCLUSIONS TO SUPPORT AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR DEVELOPMENT OR UTILITY EXTENSION AGREEMENTS REQUIRING A WATER CONNECTION, WATER SERVICE OR AN INCREASE IN WATER CONSUMPTION TO AN EXISTING USE, DEFINING THE APPLICATIONS AND AGREEMENTS SUBJECT TO THE MORATORIUM, CONFIRMING THE MAINTENANCE OF THE MORATORIUM FOR SIX MONTHS AFTER INITIAL IMPOSITION AS THE EFFECTIVE PERIOD.

WHEREAS, the City Council of the City of Gig Harbor may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications and utility extension agreements, as long as the City Council holds a public hearing on the proposed moratorium within sixty (60) days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, on May 24, 2004, the Gig Harbor City Council passed Ordinance No. 960 imposing an immediate moratorium on the acceptance of development applications and utility extension agreements requiring water service from the City's water system because the capacity in the City's water system is extremely low; and

WHEREAS, the City held a public hearing on the water moratorium on June 28, 2004; and

WHEREAS, the City Council desires to enter findings and conclusions in support of the continued maintenance of the moratorium for a period of six months after the adoption of the moratorium (which would be on or about November 24, 2004); Now, Therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions apply:

A. **“Exempt Development Permits”** shall include any permit applications identified below:

1. Administrative interpretations;
2. Sign permit;
3. Demolition permit;
4. Street use permit;
5. Permits for interior alterations of a structure with no change in use;
6. Excavation/clearing permit;
7. Hydrant use permit;
8. Right of way permit;
9. Single family remodeling permit with no change of use;
10. Plumbing permit;
11. Electrical permit;
12. Mechanical permit;
13. Sewer connection permit;
14. Driveway or street access permit;
15. Grading permit;
16. Tenant improvement permit;
17. Fire code permit;
18. Boundary Line Adjustment;
19. Design Review approval.

Notwithstanding the inclusion of any permit in the list above, if any of the above permit applications will increase water consumption, such application shall not be exempt. In addition, an exempt permit shall include any other development application: (i) submitted to the City and complete on or before the effective date of this Ordinance; or (ii) that does not require water from the City's water system.

B. **“Non-Exempt Development Permits”** shall include any permits or permit applications for any “development activity,” which is any construction or expansion of a

building, structure or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for water from the City's water system and requires a development permit from the City. A "development permit" is any land use permit required by the City for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, planned residential developments, conditional uses, shoreline substantial developments, site plan reviews or site specific rezones, and certain types of applications for amendments to the City's comprehensive plan (see, GHMC Section 19.10.010).

"Non-exempt development permits" shall also include utility extension agreements for water service outside the City limits, as identified in GHMC 13.34.060, which have not been acted upon by the City Council on the effective date of this Ordinance, regardless of the date of submission or the completeness of the application/agreement materials.

Section 2. Purpose. The purpose of this moratorium is to allow the City adequate time to allow the Department of Ecology to process the City's water rights application so that the City may obtain additional water right approvals from DOE. In addition, the City may pursue any other options to obtain water for new development.

Section 3. Findings and Conclusions in Support of Moratorium. On June 28, 2004, the City Council held a public hearing on the moratorium imposed on June 24, 2004.

A. John Vodopich, Gig Harbor Community Development Director, provided the chronology of events on the Council's adoption of the water moratorium. During the old

business portion of the Council meeting, Mr. Vodopich explained the background of the water moratorium. First, he explained that in 2000, the City submitted two water right applications to the Washington State Department of Ecology ("DOE"). DOE is extremely backlogged in their review of water right applications.

The City contacted DOE when the water emergency arose and DOE stated that they would need six to eight years to process the City's 2000 permit applications. In the alternative, DOE proposed that the City execute a cost-reimbursement contract with one of DOE's consultants who could process water right applications. It was explained that in order for this consultant to process the City's water right applications, he would have to process all of the water right applications (that had been submitted for this area) first, and then he could process the City's application. The contract would require the City to pay the consultant for processing all of the applications prior to Gig Harbor's and if there were sufficient water at this point, to process Gig Harbor's application. DOE informed the City that even after the City paid for this consultant to process the water right applications, there may not be water available for Gig Harbor. This contract was executed by the City Council ON June 10, 2004, and DOE's consultant is currently at work processing the applications.

In addition, Mr. Vodopich had discussed the progress of the application review and noted that the contract calls for DOE to render a decision on the City's applications by September 10, 2004, with a 30 day appeal period. The Council asked Mr. Vodopich how many ERU's would be available to the City if both water right applications were granted, and he answered that the applications were for approximately 2,800 ERUs and 1,200 ERU's.

B. David Freeman, Snodgrass Freeman & Associates, 3019 Judson Street, Gig Harbor, testified as to his concern that the City had sent back the applications that were subject to the moratorium. He believed that the City should have allowed those applicants who had submitted project applications prior to the moratorium to continue through the process of site plan review, even during the pendency of the moratorium. He recommended a queuing system that would allow the City staff to review the applications in the order of submittal, so that there would not be a rush of applications flooding the City when the moratorium is lifted.

C. Theo Giddeon, Master Builders Association. Mr. Giddeon agreed with the concerns voiced by Mr. Freeman and with the recommendation for a queuing system. He said that he believed this would allow a smoother transition once the moratorium was lifted.

D. Carol Morris, City Attorney. Ms. Morris said that there was no guarantee when the moratorium would be lifted, it could be months or years from now. During the moratorium, the City may change its codes. If the City staff processed applications subject to the moratorium now, under the current codes, an applicant may believe that his/her application will be reviewed and approved/denied under the existing codes. This may or may not be true, because the City may amend its codes and the application may be subject to the new codes. In addition, if the City staff processed applications subject to the moratorium now, and the codes did change, it would mean that staff would be required to review and process applications twice.

She also responded to the comment made that other cities had reviewed applications while a moratorium was pending by stating that those situations were likely

very different from the current situation in Gig Harbor. Usually, when a city imposes a moratorium, the City is in control of the date the moratorium will expire. In Gig Harbor, there is no information about when the City will have water, and the City Council cannot fix a date when the moratorium will be lifted. Because of the possibility that the City could change the codes before the moratorium is lifted, which could be years in the future, she recommended that the Council not adopt a queuing system or require staff to review applications subject to the moratorium at this point.

After this testimony and the staff reports, the City Council briefly discussed the concerns regarding the queuing system for those applications that were in process when the moratorium was lifted. The Council agreed that these applications were far enough along in the process that they would have an advantage over any new applications, when resubmitted after lifting of the moratorium. The Council determined that they would re-evaluate this issue in six months to determine if any other action would be required.

The City Council determined to maintain the moratorium imposed by Ordinance No. 960 for the six-month period allowed by state law, based on the above facts. The Council noted that there was no testimony or evidence introduced in opposition of the moratorium. The Council concluded that maintenance of the moratorium was required for the public health, safety and welfare, given that there was no water available for new development at this time.

Section 4. Moratorium Maintained. A moratorium shall be maintained on the acceptance of all non-exempt development permit applications for property inside and outside the City limits for six months, which began on the date of adoption of Ordinance

No. 960. If the City has not received water rights on or before November 1, 2004, the City Council hereby directs the City Clerk to schedule a public hearing on the extension of the moratorium, to be held before expiration of this moratorium on or about November 24, 2004. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

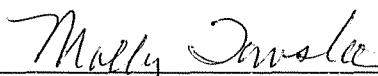
Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. 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 July, 2004.


MAYOR Gretchen Wilbert

ATTEST/AUTHENTICATED:


Molly Towslee, City Clerk

APPROVED AS TO FORM:


Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 7/7/04

PASSED BY THE CITY COUNCIL: 7/26/04

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