

## ORDINANCE NO. 960

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO WATER AVAILABILITY FOR NEW DEVELOPMENT, ADOPTING AN IMMEDIATE 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, TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS AND AGREEMENTS SUBJECT TO THE MORATORIUM, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ESTABLISHING SIX MONTHS AS THE EFFECTIVE PERIOD OF THE MORATORIUM UNTIL THE CITY COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF THIS ORDINANCE.

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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, the City desires to impose 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 has submitted applications for additional water rights to the Department of Ecology (DOE), but DOE has not yet acted on the

applications, and the City has no information from DOE to indicate when DOE will issue any new water rights to the City; and

WHEREAS, the City's water concurrency regulations allow applicants to submit applications for development even when water is not available in the City's water system, and if the applicant cannot provide water for the proposed project from a source other than the City's water system, the City may deny issuance of a water concurrency certificate and also deny the underlying development application; and

WHEREAS, the City's water concurrency regulations allow those with denied water concurrency certificates (as well as the denied underlying development application) to appeal the City's denial; and

WHEREAS, the City Council finds that the City will not have additional water for development unless and until DOE issues new water rights to the City, and because there is no indication when the new water rights will issue, processing development applications (requiring water from the City's water system) through the water concurrency review, denial and appeals process will be a time-intensive and unnecessary exercise for staff; and

WHEREAS, the City Council desires to impose an immediate moratorium on the acceptance of development applications or utility extension agreements requiring water from the City's water system; 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 (A) hold a hearing on the recommendations of staff regarding the capacity in the City's water system and the possible solutions; and (B) obtain additional water right approvals from DOE.

Section 3. Moratorium Imposed. The City Council hereby imposes a moratorium on the acceptance of all non-exempt development permit applications for property inside and outside the City limits. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the date of adoption of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 5 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of adoption, or before July 23, 2004. The Council shall hold this hearing on June 28, 2004. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium, and either justify its continued existence or cancel the moratorium.

Section 6. 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 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership

of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City's acceptance of non-exempt development applications for property, such applications could become vested, even though there are inadequate public services (water) for the development. The City does not know when DOE will issue additional water rights to the City, and the regulations applicable to non-exempt development applications could change during the period of the moratorium. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of development applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, those with previously obtained approvals for development and those with development applications using alternative water sources may proceed with processing.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor, this 24th day of May, 2004.

*Gretchen Wilbert*  
MAYOR Gretchen Wilbert

ATTEST/AUTHENTICATED:

*Molly M. Towslee*

Molly Towslee, City Clerk

APPROVED AS TO FORM:

*Carol A. Morris*

Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 5/24/04  
PASSED BY THE CITY COUNCIL: 5/24/04  
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