

ORDINANCE NO. 886

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE, ZONING AND ENVIRONMENTAL PROTECTION, AMENDING THE ADMINISTRATIVE APPEAL PROCEDURE FOR APPEALS OF CERTAIN DETERMINATIONS MADE BY THE CITY UNDER THE STATE ENVIRONMENTAL POLICY ACT ON ACTIONS AND PROJECT PERMIT APPLICATIONS, AMENDING SECTION 18.04.230 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City of Gig Harbor may provide for administrative appeals of determinations relating to the State Environmental Policy Act (“SEPA”) in their SEPA procedures, as long as they comply with the requirements of WAC 197-11-680; and

WHEREAS, the City has adopted such appeal procedures in Gig Harbor Municipal Code (“GHMC”) Section 18.04.230; and

WHEREAS, recently, premature judicial appeals were filed of the Hearing Examiner’s decision on SEPA issues for a project permit application prior to the date that the City Council was scheduled to hear an appeal of the project permit decision; and

WHEREAS, the City Council desires to amend GHMC Section 18.04.230 to ensure that the City’s codes contain references to the applicable statutes on judicial appeals for SEPA issues, when the underlying action is subject to an administrative appeal to the City Council; and

WHEREAS, the City Council desires to make other amendments to GHMC Section 18.04.230 to ensure that it is clearly written for the benefit of both City Staff and the public; and

WHEREAS, the Gig Harbor SEPA Responsible Official has reviewed this Ordinance and determined that it is exempt from SEPA, pursuant to WAC 197-11-800(20);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 18.04.230 of the Gig Harbor Municipal Code is hereby amended to read as follows:

18.04.230 Appeals.

A. Decisions that may be appealed. There is no administrative appeal of the intermediate steps under SEPA, including, but not limited to, lead agency determination, or scoping, draft EIS adequacy. SEPA administrative appeals shall be limited to review of final threshold determinations, the adequacy of final environmental impact statements, mitigation or failure to mitigate environmental impacts, and project denials.

B. Appeals of certain decisions will be heard in a consolidated appeal hearing.

(1) The following appeals of SEPA procedural or substantive determinations need not be consolidated with a hearing or appeal on the underlying governmental action:

(a) an appeal of a determination of significance;

(b) an appeal of a procedural determination made by the City when the City is the 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 application;

(c) an appeal of a procedural determination made by the City on a nonproject action; and

(2) Appeals of declarations of nonsignificance, EIS adequacy, mitigation, ~~and~~ project denial ~~and open record public hearings~~ shall be consolidated with an open record hearing on the project action or underlying permit, if one is provided for in Chapter 19.01. ~~for the underlying permit(s), as described in Chapter 19.01 GHMC, shall be consolidated and heard together. Declarations of significance, issued before a decision on the underlying permit(s), may be appealed and heard before the consolidated open record public hearing on the permit and other SEPA issues.~~

C. Time to file an appeal.

(1) An administrative appeal of a procedural or substantive determination under SEPA issued at the same time as the decision on the project action or underlying permit shall be filed within fourteen (14) days after a notice of decision (under GHMC Section 19.05.008 and 19.05.009), otherwise, an appeal must be filed within fourteen (14) days after other notice that the decision has been made and is appealable.

(2) In order to allow public comment on a DNS prior to requiring an administrative appeal to be filed, this appeal period shall be extended for an additional seven (7) days if the appeal is of a DNS for which public comment is required under chapter 197-11 WAC.

(3) For threshold determinations issued prior to a decision on a project action or the underlying permit, an administrative appeal shall be filed within fourteen (14) days after notice that the determination has been made and is appealable.

D. Appeal must be filed in writing. All SEPA appeals must be filed in writing with the Department of Planning and Community Development. ~~responsible official within 14 calendar days after the final comment due date on a SEPA threshold determination, pursuant to GHMC 19.05.009.~~

An appeal must include the applicable appeal fee and all of the elements described in GHMC 19.06.004(4), "Content of Appeal."

E. Date for hearing on appeals of a DS. The hearing date for appeals of declarations of significance issued before a decision on the permit shall be not more than 45 days from the date the appeal is filed.

F. Timeliness of appeals. On receipt of a written notice of appeal, the responsible official shall forward the appeal to the hearing examiner, who shall determine whether the appeal is timely prior to the scheduling of any appeal hearing or consolidated open record hearing on the underlying project permit. The hearing examiner shall issue a

written decision to the appellant, project applicant and the responsible official if the appeal is untimely and will not proceed. determine if the notice is timely. If the notice is untimely, the responsible official shall advise the person(s) who filed the notice that no appeal hearing will be scheduled because the notice was untimely. If the appeal is timely, the responsible official shall set a hearing date and transmit the appeal notice to the hearing examiner.

G. SEPA appeal is an open record hearing. Hearing examiner SEPA appeals, and any consolidated public hearings on the underlying permit, shall be open record hearings, as described in Chapter 19.05 GHMC. The hearing examiner shall take sworn testimony, consider all relevant evidence and decide the issues de novo; provided, however, that the responsible official's decision(s) shall be given substantial weight on procedural determinations.

H. Date for issuance of decision. The hearing examiner shall issue a written decision, which shall include specific findings of fact and conclusions of law, within the time period set forth in GHMC Section 19.05.008, 40 working days of the close of the hearing, unless a longer period is agreed to in writing by the applicant and the hearing examiner.

I. Effect of hearing examiner's decision.

(1) Pursuant to WAC 197-11-680(3)(c), this administrative appeal procedure must be used before anyone may initiate judicial review of any SEPA issue that could have been reviewed under the City's SEPA procedures.

(2) 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 limitations control the appeal of non-SEPA issues. RCW 43.21C.075 contemplates a single lawsuit.

3) The hearing examiner's decision on the timeliness of an appeal, threshold determinations and EIS adequacy shall be the final decision of the city. In addition, the hearing examiner's decision is final if the decision involves a project action or project permit application that is not appealable to the City Council, as provided in GHMC 19.01.003. Appeals of the hearing examiner's decision on these issues shall be filed in the Pierce County superior court, but appellants must follow RCW 43.21C.075(6)(c), which provides that "judicial review under chapter 43.21C shall without exception be of the governmental action together with its accompanying environmental determinations," which contemplates a single lawsuit.

(4) Appeals of the hearing examiner's decision on SEPA mitigation and project denial shall be filed with the city council, as set forth in GHMC 19.06.004, except as provided in Subsection (J) below.

J. City Council appeals. Appeals to the city council of the hearing examiner's decision on SEPA mitigation and project denial appeals shall be consolidated with decisions subject to city council review by as shown in GHMC Section 19.01.003. -Chapter 19.04 GHMC. Appeals of SEPA mitigation or project denial under SEPA are Decisions not appealable to the subject to city council if the underlying action or project permit application is not appealable to the city council as shown in GHMC Section 19.01.003.

~~review may not be appealed to the city council as part of a SEPA mitigation or project denial appeal.~~ In the appeal, the city council shall review the hearing examiner's ~~open record hearing~~ decision in a closed record appeal as described in Chapter 19.06 GHMC. The record on appeal shall consist of the hearing examiner's findings of fact, conclusions of law, and decision; a taped or written transcript of the hearing; and any exhibits accepted into evidence at the hearing. No other evidence shall be considered unless it can be shown that the hearing examiner erred in excluding such evidence or that such evidence was not available at the time of the open record hearing. The city council may reverse the decision of the hearing examiner based solely upon the criteria set forth the Chapter 19.06 GHMC.

K. Effect of City Council decision. The city council's decision ~~on project mitigation or denial, on the appeal and~~ the underlying permits shall be the final decision of the city. Appeals of the city council's decision shall be filed in the Pierce County superior court.

L. Notice of Decision. ~~If a time limit is established by statute or ordinance for commencing a judicial appeal of the project permit,~~

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

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

(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; and

(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.

M. Deadlines for Judicial Appeals. The time limitations and procedures for judicial appeals of decisions in this section shall be as set forth in WAC 197-11-680(4), RCW 43.21C.075 and GHMC Section 19.06.006. ~~Title 19.~~ Only a party to the proceeding appealed from may appeal the decisions set forth above.

Section 2. As required by RCW 36.70A.106(2), a copy of this Ordinance will be sent to the Washington Department of Trade and Community Development within 10 days after final adoption.

Section 3. 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 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of a summary, consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor this 25th day of June, 2001.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: _____
CAROL A. MORRIS, CITY ATTORNEY

FILED WITH THE CITY CLERK: 6/7/01
PASSED BY THE CITY COUNCIL: 6/25/01
PUBLISHED: 7/3/01
EFFECTIVE DATE: 7/8/02
ORDINANCE NO. 886

**SUMMARY OF ORDINANCE NO. 886
of the City of Gig Harbor, Washington**

On June 25, 2001 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 886, the summary of text of which is as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, RELATING TO LAND USE, ZONING AND
ENVIRONMENTAL PROTECTION, AMENDING THE
ADMINISTRATIVE APPEAL PROCEDURE FOR APPEALS OF
CERTAIN DETERMINATIONS MADE BY THE CITY UNDER
THE STATE ENVIRONMENTAL POLICY ACT ON ACTIONS
AND PROJECT PERMIT APPLICATIONS, AMENDING
SECTION 18.04.230 OF THE GIG HARBOR MUNICIPAL CODE.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of June 25, 2001.

Molly M. Towslee, City Clerk