

## **ORDINANCE NO. 870**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ENFORCEMENT OF THE CITY'S CODES RELATING TO STREETS, SIDEWALKS, PUBLIC WAYS, PUBLIC AND PRIVATE STORM WATER SYSTEMS AND FACILITIES, PUBLIC WORKS STANDARDS AND THE WATER AND SEWER CODES, ADDING A NEW CHAPTER 12.17 TO THE GIG HARBOR MUNICIPAL CODE, DESCRIBING VIOLATIONS, THE PROCEDURES FOR ENTRY ONTO PROPERTY FOR THE PURPOSE OF INSPECTIONS, ISSUANCE OF NOTICES OF VIOLATION, APPEALS OF NOTICES OF VIOLATION, PENALTIES AND COLLECTION OF PENALTIES.**

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WHEREAS, the City Council desires to use a uniform procedure for the enforcement of its development codes and public works standards; and

WHEREAS, the adoption of this Ordinance has been determined to be exempt from the State Environmental Policy Act by the City's SEPA Responsible Official, pursuant to WAC 197-11-800(2); Now, Therefore,

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

Section 1. A new chapter 12.17 is hereby added to the Gig Harbor Municipal Code, to read as follows:

### **Chapter 12.17 ENFORCEMENT**

Sections:

- 12.17.002      Violations.
- 12.17.004      Enforcement.
- 12.17.006      Investigation and notice of violation.
- 12.17.008      Time to comply.
- 12.17.010      Stop work order.

12.17.012	Emergency order.
12.17.014	Review by hearing examiner.
12.17.016	Civil penalty.
12.17.018	Criminal penalties.
12.17.020	Additional relief.

#### **12.17.002      Violations.**

A. It is a violation of GHMC Titles 12, 13 and/or 14 for any person to initiate, maintain or cause to be initiated or maintained the use of any structure, land or property within the City of Gig Harbor without first obtaining the permits or authorizations required for the use by the aforementioned codes.

B. It is a violation of GHMC Titles 12, 13 and/or 14 for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the City of Gig Harbor in any manner that is not permitted by the terms of any permit or authorization issued pursuant to the aforementioned codes; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

C. In addition to the above, it is a violation of GHMC Titles 12, 13 and/or 14 to:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with the aforementioned codes;
2. To misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization;
3. Fail to comply with any of the requirements of or violate any of the provisions of GHMC Titles 12, 13 and/or 14.

#### **12.17.004      Enforcement.**

A. The public works director has the authority to enforce this Chapter and Titles 12, 13 and/or 14 GHMC. The public works director may call upon the police, fire, building, planning or other appropriate city departments to assist in enforcement. As used in this chapter, "public works director" shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the public works director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building, facility, street, premises or right-of-way subject to the consent or warrant, in order to perform the duties imposed by GHMC Titles 12, 13 and/or 14.

C. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of GHMC Titles 12, 13 and/or 14.

E. No provision of or any term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

**12.17.006 Investigation and notice of violation.**

A. Investigation. The public works director shall investigate any structure, activity, facility, street or use which the public works director reasonably believes does not comply with the standards and requirements of GHMC Titles 12, 13 and/or 14.

B. Notice of Violation. If after investigation the public works director determines that the standards or requirements of GHMC Titles 12, 13 and/or 14 have been violated, the public works director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall contain the following information:

1. A separate statement of each standard, code provision or requirement violated;
2. What corrective action, if any, is necessary to comply with the standards, code provision or requirements;
3. A reasonable time for compliance;
4. A statement that if the violation is not already subject to criminal prosecution, any subsequent violations may result in criminal prosecution as provided in GHMC 12.17.018.

C. Service. The notice shall be served on the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the planning director makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city's official newspaper; and
2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

**E. Other Actions May Be Taken.** Nothing in this chapter shall be deemed to limit or preclude any action or proceeding pursuant to GHMC 12.17.010, 12.17.012, 12.17.016, 12.17.018, 12.17.020 or 12.17.022.

**F. Optional Notice to Others.** The public works director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, stop work order or emergency order and the applicable requirements and procedures.

**G. Amendment.** A notice or order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

**12.17.008      Time to comply.**

**A. Determination of Time.** When calculating a reasonable time for compliance, the public works director shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
5. Any other circumstances beyond the control of the responsible party.

**B. Order Becomes Final UnlessAppealed.** Unless an appeal is filed with the public works director for hearing before the hearing examiner in accordance with GHMC 12.17.160, the notice of violation shall become the final order of the public works director. A copy of the notice shall be filed with the Pierce County auditor. The public works director may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

**12.17.010      Stop work order.**

Whenever a continuing violation of this code will materially impair the public works director's ability to secure compliance with this code, or when the continuing violation threatens the health or safety of the public or damage to public property, the public works director may issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a violation of this chapter.

**12.17.012      Emergency order.**

Whenever any use or activity in violation of GHMC Title 12, 13 and/or 14 threatens the health and safety of the occupants of the premises or any member of the public or damage to public property, the public works director may issue an emergency order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety or public property be corrected. The emergency order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an emergency order shall constitute a violation of this chapter.

Any condition described in the emergency order which is not corrected within the time specified is hereby declared to be a public nuisance and the public works director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

**12.17.014      Review by hearing examiner.**

A. Notice of Violation (Criminal Penalties). There is no administrative appeal of a notice of violation issued pursuant to GHMC 12.17.006 for violations described in GHMC 12.17.018, which subject the violator to criminal prosecution and/or the imposition of criminal penalties.

B. Notice of Violation (Civil Penalties). Any person significantly affected by or interested in a notice of violation issued by the planning director pursuant to GHMC 12.17.006 for a violation of the codes in this title which subject the violator to civil prosecution may obtain an appeal of the notice by requesting such appeal within 15 calendar days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the appeal request, the building official shall forward the request to the office of the hearing examiner, pursuant to Chapter 17.10 GHMC.

C. At or after the appeal hearing, the hearing examiner may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information;
4. Modify the notice of violation, which may include an extension of the compliance date.

D. The hearing examiner shall issue a decision within 10 days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person(s) named on the notice of violation, mailed to the complainant, if possible, and filed with the department of records and elections of Pierce County.

E. The decision of the hearing examiner shall be final, and no further administrative appeal may be filed. In order to appeal the decision of the hearing examiner, a person with standing to appeal must make application for a land use petition under Chapter 36.70C RCW within 21 days of the issuance of the examiner's decision.

### **12.17.016 Civil penalty.**

- A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of this chapter or GHMC Titles 12, 13 and/or 14 shall be subject to a cumulative penalty in the amount of \$100.00 per day for each violation from the date set for compliance until compliance with the order is achieved.
- B. The penalty imposed by this section shall be collected by civil action filed by the city attorney, and brought in the name of the city. The public works director shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the public works director, take appropriate action to collect the penalty.
- C. The violator may show as full or partial mitigation of liability:
  - 1. That the violation giving rise to the action was caused by the willful act, or neglect, or abuse of another; or
  - 2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

### **12.17.018 Criminal penalties.**

- A. Any person violating or failing to comply with any of the provisions of GHMC Titles 12, 13 and/or 14 and who has had a judgment entered against him or her pursuant to GHMC 12.17.016 or its predecessors within the past five years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding \$5,000 or be imprisoned for a term not exceeding one year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of GHMC Title 12, 13 and/or 14 shall constitute a separate offense.

- B. The above criminal penalty may also be imposed:
  - 1. For any other violation of GHMC Titles 12, 13 and/or 14 for which corrective action is not possible; and
  - 2. For any willful, intentional, or bad faith failure or refusal to comply with the standards or requirements of GHMC Title 12, 13 and/or 14.

### **12.17.020 Additional relief.**

The public works director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of GHMC Title 12, 13 and/or 14 when civil or criminal penalties are inadequate to effect compliance.

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, sentence, clause or phrase of this Ordinance.

Section 3. Publication and Effective Date. This Ordinance shall be published by an approved summary consisting of the title. This Ordinance shall be effective five days after publication, as provided by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 26th day of February, 2001.

CITY OF GIG HARBOR

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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: 2/8/01  
PASSED BY THE CITY COUNCIL: 2/26/01  
PUBLISHED: 3/7/01  
EFFECTIVE DATE: 3/12/01  
ORDINANCE NO. 870

## **SUMMARY OF ORDINANCE NO. 870**

of the City of Gig Harbor, Washington

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On February 26<sup>th</sup>, 2001, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 870, the main points of which are summarized by its title as follows:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
GIG HARBOR, WASHINGTON, RELATING TO  
ENFORCEMENT OF THE CITY'S CODES RELATING TO  
STREETS, SIDEWALKS, PUBLIC WAYS, PUBLIC AND  
PRIVATE STORM WATER SYSTEMS AND FACILITIES,  
PUBLIC WORKS STANDARDS AND THE WATER AND  
SEWER CODES, ADDING A NEW CHAPTER 12.17 TO THE  
GIG HARBOR MUNICIPAL CODE, DESCRIBING  
VIOLATIONS, THE PROCEDURES FOR ENTRY ONTO  
PROPERTY FOR THE PURPOSE OF INSPECTIONS,  
ISSUANCE OF NOTICES OF VIOLATION, APPEALS OF  
NOTICES OF VIOLATION, PENALTIES AND COLLECTION  
OF PENALTIES.**

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

APPROVED by the City Council at their meeting of February 26, 2001.

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MOLLY TOWSLEE, CITY CLERK