

ORDINANCE NO. 846

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING FINDINGS OF FACT AND CONCLUSIONS TO JUSTIFY THE CONTINUED IMPOSITION OF A SIX-MONTH MORATORIUM UNDER RCW 36.70A.390 ON THE ACCEPTANCE OF APPLICATIONS FOR PLANNED UNIT DEVELOPMENTS UNDER CHAPTER 17.90 AND PLANNED RESIDENTIAL DEVELOPMENTS UNDER CHAPTER 17.89 OF THE GIG HARBOR MUNICIPAL CODE, ESTABLISHING A WORK PLAN FOR PUBLIC PARTICIPATION AND PLANNING COMMISSION HEARINGS, DEFINING THE DEVELOPMENT APPLICATIONS SUBJECT TO THE MORATORIUM, AND AFFIRMING THE EMERGENCY NATURE OF THE MORATORIUM IMPOSED ON MAY 8, 2000.

WHEREAS, on May 8, 2000, the City Council passed Ordinance No. 843, adopting an immediate moratorium on the acceptance of certain nonexempt development applications for property in the City; and

WHEREAS, RCW 36.70A.390 requires that the City hold a public hearing on the moratorium within 60 days of its adoption, and that the City Council adopt findings of fact and conclusions to justify the continued imposition of the moratorium; and

WHEREAS, the City Council stated its intent, at the May 8, 2000 meeting, to schedule this public hearing for June 12, 2000; and

WHEREAS, on June 12, 2000, at a regular City Council meeting, the City Council held the public hearing, accepted testimony for all members of the public desiring to be heard; and

WHEREAS, on June 12, 2000, the City Council deliberated on the issue whether to maintain the moratorium, and voted to continue the moratorium as described in this Ordinance; 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 shall apply:

A. **Exempt Development Permits** shall include any planned unit development application or planned residential development application which was complete and submitted to the City on the effective date of this Ordinance or any planned unit development or planned residential development that has already received final approval by the City. In addition, exempt development permits include any other land use, subdivision or development approval that is not described as a non-exempt development permit in subsection B below.

B. **Non-Exempt Development Permits** shall include any planned unit development application or planned residential development application which was submitted to the City but was not complete on the effective date of this Ordinance, as well as any planned unit development or planned residential development applications that are submitted to the City after the effective date of this Ordinance.

Section 2. Adoption of Findings of Fact. As required by RCW 36.70A.390, the City Council hereby adopts the following findings of fact to support the continued imposition of the City's six (6) month moratorium on the acceptance of non-exempt development applications:

A. **Purpose.** The purpose of this moratorium is to allow the City adequate time to (a) hold hearings on and consider an ordinance amending or repealing its current planned unit development

chapter (chapter 17.90 GHMC) and planned residential developments (chapter 17.89 GHMC); and (2) allow the Planning Commission the necessary time to hold a public hearing(s) on the need for amended or repealed planned unit development and planned residential development regulations; (3) allow the Planning Commission to develop a recommendation to the Council; and (4) allow the City Council to consider the Planning Commission recommendation. These activities must be performed during a moratorium on the acceptance of non-exempt development permits, so that a property owner cannot vest to existing regulations (if the current chapters 17.90 and 17.89 GHMC are not repealed) which may be substantially changed during this process. The courts have recognized that municipalities may need to adopt immediate moratoria without notice so that developers could not frustrate long-term planned by obtaining vested rights to develop their property, thereby rendering new development regulations moot. Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995).

B. Interim Planning Director Testimony. During the public hearing, Patricia Iolavera, interim planning director, described the planned unit development and planned residential development process in Gig Harbor. Ms. Iolavera testified that PUDs and PRDs are floating zones and are allowed in any zoning designation in the City. The concern of the Planning Department is that the regulations for PUDs are vague in detail. The regulations are discretionary, which allows the developer to negotiate the PUD and its conditions with the Planning Department. In the Planning Departments' experience, PUDs have not been well received by the public because most property owners have expectations regarding the underlying zoning of their property. For example, property owners in an R-1 zone believe that development in that zone will resemble the development described in the Zoning Code under the R-1 zoning designation. These property owners are

surprised to learn that the development standards in an R-1 zone can be administratively changed through the PUD process.

Ms. Iolavera recommended that amendments be proposed to the PUD and PRD chapters in the Zoning Code for clarity as well. She believes that these provisions need to be clear for purposes of administration and to implement the legislative intent of the City Council in its adoption of the Comprehensive Plan and Zoning Code.

Ms. Iolavera noted that her research disclosed that the PUD and PRD processes were adopted in the 1980's, prior to the Growth Management Act. While the PUD and PRD processes may still be a good planning tool, she recommended that they be reviewed in conjunction with the City's Comprehensive Plans, adopted under GMA.

C. Public Testimony.

1. Marie Berejikian, Peninsula Neighborhood Association, requested that the moratorium be imposed and that the City work on the regulations.

2. Nicholas Natiello, supports the moratorium and believes that the PUD and PRD chapters are outdated.

3. Tiffany Spears, Master Builders Association, opposed to the moratorium, and believes that if the City does impose the moratorium, it should not be longer than six months.

4. John Meyers, PNA, supports the moratorium, and is researching PUDs in other cities.

5. Linda Gair, supports the moratorium, and calls the PUD process a poorly defined variance.

6. Jeff Backhurt, Pierce County Association of Realtors, has concerns about the need for a moratorium, and did not believe there to be any emergency.

7. Jim Franich, believes that any issue threatening the uniqueness of this area should be carefully reviewed.

8. Rich Yasger, states that the City should not plan in a hurry, and that PUDs and PRDs should be well-thought out planning tools.

B. City Attorney. Carol Morris, City Attorney, provided the Council with information regarding recent court cases. In Citizens v. Mount Vernon, 133 Wn.2d 861 (1997), the Washington Supreme Court reaffirmed that PUDs are rezones, and that rezones may only be approved if there is a showing of a substantial change in circumstances since the last rezoning. The City's regulations on PUDs and PRDs need to be amended to add this criterion. In addition, the fact that PUDs and PRDs are floating zones, and are allowed on all zoning designations in the City, was not analyzed in the City's Comprehensive Plan. Because the PUD and PRD regulations were adopted pre-GMA, the City Attorney recommended that this issue be reviewed to ensure consistency.

D. Council Deliberations. The City Council deliberated after public testimony was provided. In general, the Council agreed that changes were required to the PUD and PRD chapters. However, at least one Councilmember recognized that GMA encourages density, and PUDs and PRDs are planning tools to address the impacts of density on surrounding zones. The Council was concerned about imposing any moratorium, and wanted to be sure that the moratorium would not be extended beyond six months. The Council also expressed their desire that the public be given as much opportunity as possible to comment on the PUDs and PRD processes during the moratorium.

E. Work Plan. The Council discussed imposition of the six-month moratorium with a work plan, attached hereto as Exhibit A.

Section 3. Moratorium Continued. In light of the above, the City Council hereby continues the moratorium imposed on May 8, 2000, on the acceptance of all non-exempt development permit applications for property within the City limits.

Section 4. Duration of the Moratorium. The moratorium continued by this Ordinance commenced on May 8, 2000, and shall terminate on November 8, 2000, or at the time that the tasks described in the work plan (attached hereto as Exhibit A and incorporated herein by this reference) have been completed, whichever is sooner. The Council shall make the decision to terminate this 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 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 6. Declaration of Emergency. The City Council hereby declares 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 under regulations subject to imminent change by the City in its development regulation revision process. 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 and previously obtained approvals for development may proceed with processing or development, as the case may be.

Section 7. 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 immediately upon passage as set forth in Section 7.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 10th day of July, 2000.

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: 6/21/00
PASSED BY THE CITY COUNCIL: 7/10/00
PUBLISHED: 7/19/00
EFFECTIVE DATE: 7/24/00
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Exhibit 'A'

PLANNING COMMISSION'S PROPOSED
WORK PLAN FOR PUD/PRD REVIEW
(July 10, 2000)

1. Meeting of August 3, 2000:

- **5:30 – 7:00 p.m.** Review of old business. Informational presentation to Commission on PUD/PRDs.
- **7:00 – 9:00 p.m.** Public Hearing

2. Meeting of August 17, 2000:

- **5:30 – 7:00 p.m.** Work Session
- **7:00 – 9:00 p.m.** Public Hearing: sign up sheet, limit time on comments.

3. Meeting of September 7, 2000:

- **5:30 – 9:00 p.m.** Work session to review verbal and written comments from prior meeting and begin draft recommendation to City Council. (Public welcome to attend, but no comments will be accepted).

4. September 21, 2000:

- **5:30 – 7:00 p.m.** Review final recommendation and send to Council. (Public welcome to attend, but not other comments will be accepted.)

5. September 25, 2000:

- **7:00 p.m.** Present to City Council.

SUMMARY OF ORDINANCE NO. 846

of the City of Gig Harbor, Washington

On July 10, 2000, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 846, 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 LAND USE AND ZONING, ADOPTING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR PLANNED UNIT DEVELOPMENTS UNDER CHAPTER 17.90 OF THE GIG HARBOR MUNICIPAL CODE, TO BE EFFECTIVE FOR A PERIOD OF SIX MONTHS, TO ALLOW FOR THE CONSIDERATION OF AN ORDINANCE REPEALING THE EXISTING CHAPTER 17.90 GHMC AND FOR THE PLANNING COMMISSION TO INITIATE A WORK PLAN FOR PUBLIC HEARINGS AND THE DEVELOPMENT OF RECOMMENDATIONS FOR NEW PLANNED UNIT DEVELOPMENT REGULATIONS; DEFINING THE DEVELOPMENT APPLICATIONS SUBJECT TO THE MORATORIUM, SETTING A DATE FOR THE PUBLIC HEARING ON THE MORATORIUM AND DECLARING AN EMERGENCY NECESSITATING THE IMMEDIATE ADOPTION OF A MORATORIUM.

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

APPROVED by the City Council at their meeting of July 10, 2000

MOLLY TOWSLEE, CITY CLERK