

## **ORDINANCE NO. 791**

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ENVIRONMENTAL REVIEW AND IMPLEMENTATION OF THE STATE ENVIRONMENTAL POLICY ACT (SEPA) (CHAPTER 43.21C RCW); INCORPORATING AND ADOPTING THE REVISED SEPA RULES (CHAPTER 197-11 WAC) WHICH WERE RECENTLY ADOPTED BY THE DEPARTMENT OF ECOLOGY; ADOPTING THE FOLLOWING NEW WASHINGTON ADMINISTRATIVE CODE SECTIONS BY REFERENCE: WAC 197-11-158, -164, -168, -172, -210, -220, -259, -355, -721, AND -775 AND MAKING TITLE 18 CONSISTENT THEREWITH; REVISING TIME PERIODS FOR CHANGING LEAD AGENCY STATUS, ACTING ON A MITIGATED DETERMINATION OF NONSIGNIFICANCE, AND FILING CERTAIN SEPA APPEALS; CREATING AN OPTIONAL DETERMINATION OF NONSIGNIFICANCE PROCESS; MODIFYING PUBLIC NOTICE REQUIREMENTS FOR THRESHOLD DETERMINATIONS; AMENDING SECTIONS 18.04.020, 18.04.050(C), 18.04.060, 18.04.120(E), 18.04.160, 18.04.230(B) AND (H), AND 18.04.250; ADDING A NEW SECTION 18.04.123 TO THE GIG HARBOR MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, the Department of Ecology has recently adopted new SEPA rules which were incorporated into Chapter 197-11 WAC; and

WHEREAS, Title 18.04 of the Gig Harbor Municipal Code (Environmental Review) needs to be amended to incorporate these changes; NOW, THEREFORE

BE IT ORDAINED by the City Council of the City of Gig Harbor, Washington as follows:

Section I. Section 18.04.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

#### **18.04.020 Adoption by reference.**

The city adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended, by reference:

- 197-11-040 Definitions.
- 197-11-050 Lead agency.
- 197-11-055 Timing of SEPA process.
- 197-11-060 Content of environmental review.
- 197-11-070 Limitations on actions during SEPA process.
- 197-11-080 Incomplete or unavailable information.
- 197-11-090 Supporting documents.
- 197-11-100 Information required of applicants.
- 197-11-158 GMA project review — Reliance on existing plans, laws, and regulations.
- 197-11-164 Planned actions — Definition and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions — Procedures for adoption.
- 197-11-172 Planned actions — Project review.
- 197-11-210 SEPA/GMA integration.
- 197-11-220 SEPA/GMA definitions.
- 197-11-225 Purpose, policy applicability and definitions.
- 197-11-228 Overall integration procedures.
  
- 197-11-230 Timing of an integrated GMA/SEPA process.
- 197-11-232 Integration procedures for preliminary planning, environmental analysis and expanded scoping.
- 197-11-235 Integrating documents.
- 197-11-259 Determination of nonsignificance for MTCA remedial action.

Section 2. Section 18.04.050(C) of the Gig Harbor Municipal Code is hereby amended to read as follows:

#### **18.04.050 Lead agency determination and responsibilities.**

\* \* \* \* \*

C. If the city, or any of its departments, receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within ~~45~~ 14 days of receipt of the determination or the city must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the ~~45-day~~ 14-day time period. Any such petition on behalf of the city may be initiated by the responsible official or any department.

\* \* \* \* \*

Section 3. Section 18.04.060 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**18.04.060      Categorical exemptions and threshold determinations Adoption by reference.**

The city adopts the following sections of Chapter 197-11 WAC, as now existing or hereinafter amended by reference as supplemented in this chapter:

- 197-11-300      Purpose of this part.
- 197-11-305      Categorical exemptions.
- 197-11-310      Threshold determination required.
- 197-11-315      Environmental checklist.
- 197-11-330      Threshold determination process.
- 197-11-335      Additional information.
- 197-11-340      Determination of nonsignificance (DNS).
- 197-11-350      Mitigated DNS.
- 197-11-355      Optional DNS process.
- 197-11-360      Determination of significance (DS)/ initiation of scoping.
- 197-11-390      Effect of threshold determination.

Section 4. Section 18.04.120(E) of the Gig Harbor Municipal Code is hereby amended to read as follows:

**18.04.120      Threshold determinations - Mitigated DNS.**

\* \* \* \* \*

E.      The city shall not act upon a proposal for which a mitigated DNS has been issued for ~~15~~ 14 days after the date of issuance; provided, that the requirements of this section shall not apply to a DNS issued pursuant to the Optional DNS Process described in GHMC §18.04.123.

\* \* \* \* \*

Section 5. A new section 18.04.123 is hereby added to the Gig Harbor Municipal Code to read as follows:

**18.04.123      Optional DNS Process.**

A.      If the responsible official has a reasonable basis for determining that significant adverse environmental impacts are unlikely, the responsible official may elect to use the single integrated comment period set forth in this section. If this process is used,

a second comment period will typically not be required when the DNS is issued.

B. If the optional process set forth in this section is used, the responsible official shall:

1. State on the first page of the notice of application that it expects to issue a DNS for the proposal, and that

(a) the optional DNS process is being used;

(b) this may be the only opportunity to comment on the environmental impacts of the proposal;

(c) the proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and

(d) a copy of the subsequent threshold determination for the specific proposal may be obtained upon request (in addition, the city may maintain a general mailing list for threshold determination distribution).

2. List in the notice of application the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected;

3. Comply with the requirements for a notice of application and public notice in GHMC § 19.03.001; and

4. Send the notice of application and environmental checklist to:

(a) Agencies with jurisdiction, the department of ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and

(b) Anyone requesting a copy of the environmental checklist for the specific proposal (in addition, the city may maintain a general mailing list for checklist distribution).

C. If the responsible official indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice of application in accordance with GHMC § 18.04.050, WAC 197-11-940 and WAC 197-11-948.

D. The responsible official shall consider timely comments on the notice of application and either:

1. Issue a DNS or mitigated DNS with no comment period using the

procedures in subsection E below;

2. Issue a DNS or mitigated DNS with a comment period using the procedures in subsection E below, if the responsible official determines a comment period is necessary;

3. Issue a DS; or

4. Require additional information or studies prior to making a threshold determination.

E. If a DNS or mitigated DNS is issued under subsection D(1) or D(2) above, the responsible official shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be recirculated.

Section 6. Section 18.04.160 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**18.04.160 Public notice.**

Whenever the city issues a threshold determination, or EIS requiring public notice, the city shall give public notice of the determination or the availability of the environmental documents and whether any public hearing will be held as follows:

A. Threshold Determination Notice. Public notice will be given on the following situations:

1. DNS involving another agency with jurisdiction;

2. DNS involving demolition of any structure or facility not exempted by WAC 197-11-800(2)(f) or WAC 197-11-880;

3. DNS involving issuance of clearing or grading permits not exempted under WAC Part Nine - Categorical Exemptions;

4. DNS under WAC 197-11-350(2) Early Notice;

5. DNS under WAC 197-11-350(3) Mitigated DNS;

6. DNS under WAC 197-11-360(4) change from DS to DNS;

7. DS for scoping purposes;

8. Availability of a DEIS.

B. Type of Notice. Under subsection A of this section, notice will be given as follows:

~~1. Posting the site of the proposed action;~~

~~1. 2.~~ SEPA register;

~~2. 3.~~ Publication in the official newspaper for the city of Gig Harbor.

C. Public Hearing. Whenever a public hearing is held notice shall be given. Such notice shall precede the hearing by at least 15 days.

D. Type of Notice. Under subsection C of this section, notice will be given as follows:

1. Posting on or near the property or publication in the official newspaper of the city of Gig Harbor for site specific proposals;

2. Mailing to property owners within 300 feet for site specific proposals.

Section 7. Section 18.04.230(B) and (H) of the Gig Harbor Municipal Code is hereby amended to read as follows:

**18.04.230 Appeals.**

\* \* \* \* \*

B. All SEPA appeals must be filed in writing with the responsible official within 14 calendar days ~~of the date of the SEPA decision~~ after notice of a final decision is issued pursuant to GHMC §19.05.009 or after other notice that the decision has been made and is appealable; provided, that in order to allow public comment on a DNS prior to requiring an appeal to be filed, this appeal period shall be extended for an additional seven (7) days. 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.

\* \* \* \* \*

H. If a time limit is established by statute or ordinance for commencing a judicial appeal of the project permit, the responsible official shall give official notice whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing a judicial appeal of the date and place for commencing the appeal. The notice shall include:

(1) notice that any SEPA issues must be appealed within the time limit set

by statute or ordinance for appealing the underlying governmental action,

(2) 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

(3) where the appeal may be filed.

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.

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Section 8. Section 18.04.250 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**18.04.250 Definitions - Adoption by reference.**

The city adopts the following sections of Chapter 197-11 WAC, as now existing or hereafter amended, by reference, as supplemented in this chapter:

197-11-700	Definitions.
197-11-702	Act.
197-11-704	Action.
197-11-706	Addendum.
197-11-708	Adoption.
197-11-710	Affected tribe.
197-11-712	Affecting.
197-11-714	Agency.
197-11-716	Applicant.
197-11-718	Built environment.
197-11-720	Categorical exemption.
<u>197-11-721</u>	<u>Closed record appeal.</u>
197-11-722	Consolidated appeal.
197-11-724	Consulted agency.
197-11-726	Cost-benefit analysis.
197-11-728	County/city.
197-11-730	Decision maker.
197-11-732	Department.
197-11-734	Determination of nonsignificance (DNS).
197-11-736	Determination of significance (DS).
197-11-738	EIS.
197-11-740	Environment.

197-11-742	Environmental checklist.
197-11-744	Environmental document.
197-11-746	Environmental review.
197-11-750	Expanded scoping.
197-11-752	Impacts.
197-11-754	Incorporation by reference.
197-11-756	Lands covered by water
197-11-758	Lead agency.
197-11-760	License.
197-11-762	Local agency.
197-11-764	Major action.
197-11-766	Mitigated DNS.
197-11-768	Mitigation.
197-11-770	Natural environment.
197-11-772	NEPA.
197-11-774	Nonproject.
197-11-775	<u>Open record hearing.</u>
197-11-776	Phased review.
197-11-778	Preparation.
197-11-780	Private project.
197-11-782	Probable.
197-11-784	Proposal.
197-11-786	Reasonable alternative.
197-11-788	Responsible official.
197-11-790	SEPA.
197-11-792	Scope.
197-11-793	Scoping.
197-11-794	Significant.
197-11-796	State agency.
197-11-797	Threshold determination.
197-11-799	Underlying governmental action.

Section 9. Codes adopted by Reference. Pursuant to RCW 35A.12.140, one copy of the Washington Administrative Code sections adopted by reference herein have been and are now on file with the City Clerk and are available for examination by the public.

Section 10. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 11. Effective Date. This ordinance shall take effect and be in full force and effect five (5) days after its passage, approval and publication as required by law.



PASSED by the Council of the City of Gig Harbor, this day 11<sup>th</sup> day of May, 1998.

APPROVED:

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GRETCHEN A. WILBERT, MAYOR

ATTEST:

By: \_\_\_\_\_  
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:  
OFFICE OF CITY ATTORNEY

By: \_\_\_\_\_  
CAROL A. MORRIS

Filed with City Clerk:	April 27, 1998
Passed by City Council:	May 11, 1998
Date Published:	May 20 <sup>th</sup> , 1998
Date Effective:	May 25 <sup>th</sup> , 1998

**SUMMARY OF ORDINANCE NO. 791**  
of the City of Gig Harbor, Washington

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On the 11th day of May, 1998, the City Council of the City of Gig Harbor, passed Ordinance No. 791. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ENVIRONMENTAL REVIEW AND IMPLEMENTATION OF THE STATE ENVIRONMENTAL POLICY ACT (SEPA) (CHAPTER 43.21C RCW); INCORPORATING AND ADOPTING THE REVISED SEPA RULES (CHAPTER 197-11 WAC) WHICH WERE RECENTLY ADOPTED BY THE DEPARTMENT OF ECOLOGY; ADOPTING THE FOLLOWING NEW WASHINGTON ADMINISTRATIVE CODE SECTIONS BY REFERENCE: WAC 197-11-158, -164, -168, -172, -210, -220, -259, -355, -721, AND -775 AND MAKING TITLE 18 CONSISTENT THEREWITH; REVISING TIME PERIODS FOR CHANGING LEAD AGENCY STATUS, ACTING ON A MITIGATED DETERMINATION OF NONSIGNIFICANCE, AND FILING CERTAIN SEPA APPEALS; CREATING AN OPTIONAL DETERMINATION OF NONSIGNIFICANCE PROCESS; MODIFYING PUBLIC NOTICE REQUIREMENTS FOR THRESHOLD DETERMINATIONS; AMENDING SECTIONS 18.04.020, 18.04.050(C), 18.04.060, 18.04.120(E), 18.04.160, 18.04.230(B) AND (H), AND 18.04.250; ADDING A NEW SECTION 18.04.123 TO THE GIG HARBOR MUNICIPAL CODE AND ESTABLISHING AN EFFECTIVE DATE.

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

DATED this 11th day of May , 1998.

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CITY CLERK, MOLLY TOWSLEE