

ORDINANCE NO. 766

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON,
RELATING TO VESSELS AND ACTIVITIES IN GIG HARBOR BAY,
REPEALING THE EXISTING HARBOR CODE CHAPTER 8.24 AND
ADDING A NEW HARBOR CODE CHAPTER 8.24 TO THE GIG HARBOR
MUNICIPAL CODE WITH ADDITIONAL DEFINITIONS, DESCRIPTIONS
OF VIOLATIONS, PENALTIES AND PROCEDURES FOR IMPOUNDING
AND AUCTIONING OF VESSELS UNDER CERTAIN LIMITED
CIRCUMSTANCES.**

WHEREAS, the existing Harbor Code (chapter 8.24 GHMC) authorizes the Harbor Warden to take certain actions to enforce the Code; and

WHEREAS, there are no explicit procedures in the existing Harbor Code to guide the Harbor Warden's enforcement of the Code, although the Harbor Warden may follow general procedures set forth in State statute; and

WHEREAS, the City Council determines that the Harbor Warden's responsibilities to enforce the Harbor Code can be more efficiently handled if the procedures are described and set forth in the City's Code; now, therefore,

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

Section 1. Chapter 8.24 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Chapter 8.24 is hereby added to the Gig Harbor Municipal Code, to read as follows:

Chapter 8.24

HARBOR CODE

8.24.002	Application and Justification
8.24.004	Authorization
8.24.006	Definitions
8.24.008	Additional Definitions
8.24.010	Harbor Warden
8.24.012	Rules of the Road
8.24.014	Liability
8.24.016	Chapter 88.12 RCW Adopted by Reference
8.24.018	Chapter 352.60 WAC Adopted by Reference
8.24.020	Interference with Navigation
8.24.022	Mooring Buoys
8.24.024	Residential Use of Floating Homes Prohibited
8.24.026	Speed Regulations
8.24.028	Seaplanes
8.24.030	Removal of Obstructing Vessels
8.24.032	Sunken Vessels
8.24.034	Unseaworthy Craft
8.24.036	Impoundment Authority
8.24.038	Impoundment Procedures
8.24.040	Nuisances

8.24.002 Application and justification. The provisions of this chapter shall be applicable to all vessels and watercraft operating in the city limits of Gig Harbor Bay. This chapter may also be enforced in the area of Gig Harbor Bay within the jurisdiction of Pierce County, if the parties have executed an interlocal agreement for such enforcement. The provisions of this chapter shall be construed to supplement United States laws and state laws and regulations when not expressly inconsistent therewith, in the areas where the United States and state laws are applicable. To the extent that this chapter is inconsistent with federal or state laws and regulations, the federal and/or state laws shall control.

8.24.004 Authorization. The City, in the exercise of its police power, assumes control and jurisdiction over all waters within its limits, and such waters shall, for the purposes of this chapter, be known as "Gig Harbor Bay."

8.24.006 Definitions. The "Definitions" contained in RCW 88.12.010, as the same now exists or may hereafter be amended, are hereby adopted by reference, and the definitions set forth therein shall apply throughout this chapter.

8.24.008 Additional definitions. In addition to the definitions in RCW 88.12.010, the following definitions shall apply and have the meanings set forth below, except where the same shall be clearly contrary to or inconsistent with the context of the section in which used.

- A. "Buoy" means a small float moored in the water used to define a navigation channel, convey an official message, or provide temporary moorage for a vessel.
- B. "City" means the City of Gig Harbor.
- C. "Floating Home" means a building constructed on a float, used whole or in part for human habitation as a dwelling or business, but not designed or primarily used as a vessel, and which is normally incapable of self-propulsion, and usually permanently moored, anchored, or otherwise secured, as distinguished from the mooring or anchoring of a vessel.
- D. "Moor" means a position where vessels or watercraft are affixed to devices or structures other than a vessel's parochial anchoring system.
- E. "Obstruction" means any vessel or watercraft or any matter which may in any way block, interfere with or endanger any vessel or watercraft or impede navigation, or which cannot comply with the Rules of the Road identified in GHMC Section 8.24.080.
- F. "Watercraft" means any contrivance used or capable of being used as a means of transportation on water. Cribs, piles, or rafts of logs shall not be included in the terms "watercraft" or "vessel," but shall be included in the term "obstruction" when they shall be floating loose and not under any control or when under control and obstructing any navigable channel.

8.24.010 Harbor Warden. This chapter shall be enforced by the police chief, who shall be designated the Harbor Warden. It shall be the duty of the Harbor Warden, and his/her authorized designees, to:

- A. Enforce the ordinances and regulations of the City upon the waters of the harbor and adjacent lands thereto, when the harbor is affected;
- B. Maintain patrols in the harbor for the protection of life and property, including, but not limited to, the removal and disposition of drifting debris and nuisances from the waters of the harbor;
- C. Investigate and report upon marine and maritime accidents in the harbor;

- D. Coordinate all necessary functions in connection with search and rescue in the harbor;
- E. Promulgate rules and regulations governing the use of the navigable portions of waterways; and
- F. Remove, impound or sell any vessel, watercraft or obstruction anchored or moored in violation of this chapter deemed a public nuisance or a hazard to navigation or operated or afloat under conditions deemed unsafe for water transportation.

8.24.012 Rules of the Road. Except as otherwise specified in this chapter, vessels shall be subject to the International Regulations for Preventing Collisions at Sea, 1972, (72 COLREGS), Title 33, Code of Federal Regulations, part 81-72, Appendix A, as such rules are now or may hereafter be amended or adopted. Vessels engaged in a sanctioned or authorized race, log race, regatta or similar event, shall be subject to the applicable rules for such events, including, but not limited to, differing right-of-way rules.

8.24.014 Liability. Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from the failure of any person or owner of a vessel, watercraft or obstruction, to comply with the provisions of this chapter, or by reason or in consequence of any notice, order, citation, permit, permission or approval authorized or issued or done in connection with the implementation or enforcement of this chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this Code by its officers, employees or agents. Nothing in this chapter shall be construed so as to release any person owning or controlling any vessel, watercraft, pier, dock, obstruction or other structure, from any liability from damages, and the safeguards to life and property required by this chapter shall not be construed as relieving any person from installing and maintaining all other safeguards that may be required by law.

8.24.016 Chapter 88.12 RCW Adopted by Reference. Chapter 88.12 RCW, "Regulation of Recreational Vessels," as the same now exist or may hereafter be amended, is hereby adopted by reference.

8.24.018 Chapter 352-60 WAC Adopted by Reference. Chapter 352-60 WAC, "Boating Safety," as the same now exists or may be hereafter amended, is hereby adopted by reference.

8.24.020 Interference with Navigation. No person shall operate any watercraft or vessel on the water in a manner which shall unreasonably or unnecessarily interfere with other watercraft or vessels, or with the free and proper navigation of Gig Harbor Bay, or the launching of any watercraft or vessel at any public boat launching ramp.

8.24.022 Mooring Buoys. Mooring buoys are prohibited in Gig Harbor Bay where such buoys will interfere with customarily traveled routes for vessels. No more than one buoy may be installed for each ownership beyond extreme low water or line of navigability. However,

ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis. The City's permission to install a mooring buoy shall not exempt a person from obtaining any and all necessary permits or permissions required by other government authorities. Nothing in this section shall be interpreted to be inconsistent with chapter 332-30 WAC, or any other state law, regulation or rule regarding the permitting of mooring buoys.

8.24.024 Residential Use of Floating Homes or Houseboats in Harbor Prohibited. It shall be unlawful to use a floating home or houseboat for residential purposes within Gig Harbor Bay.

8.24.026 Speed Regulations. Within the waters of Gig Harbor Bay, it shall be unlawful for any person to operate a vessel or watercraft, or to taxi a seaplane at a speed in excess of five (5) miles per hour, or at a slower speed that produces a damaging wake. Nothing in this section shall be construed as exempting any person from liability caused by wake action from operation of any vessel in Gig Harbor Bay.

8.24.028 Seaplanes. Seaplane operators are encouraged to take off and land in the area outside the mouth of Gig Harbor Bay and may taxi the seaplane into Gig Harbor Bay. However, seaplane takeoffs and landings are prohibited in the City's harbor except in emergency situations and where the pilot can maintain a minimum of 200 feet of lateral separation between the seaplane and other underway or anchored vessels while operating on the water.

8.24.030 Removal of Obstructing Vessels.

A. Acts Prohibited.

1. No person having charge of any vessel, watercraft or obstruction shall moor within Gig Harbor Bay, except at permitted moorage.
2. No person having charge of any vessel, watercraft or obstruction shall make the same fast to any buoy, pier or other structure owned by or under the control of the City, without permission from the City.
3. No person having charge of any towboat shall while towing any vessel, watercraft or obstruction, in any manner obstruct navigation in the Gig Harbor Bay.

B. Harbor Warden Authority. The Harbor Warden shall have the power to order the removal of:

1. Any vessel, watercraft or obstruction anchored or moored in Gig Harbor Bay, or made fast to any buoy, pier, dock or other

structure owned by or under the authority and control of the City, in violation of this chapter; and

2. Any towboat and/or its tow obstructing navigation in the Gig Harbor Bay.

8.24.032 Sunken vessels. When any vessel or watercraft or obstruction is in danger of sinking, has been sunk or grounded, or has been delayed in such manner as to stop or seriously interfere with or endanger navigation, the Harbor Warden may order the same immediately removed. If the owner or other person in charge thereof, after being so ordered, does not proceed immediately with such removal, the Harbor Warden may take immediate possession thereof and remove the same. In so doing, the Harbor Warden shall use such methods as in the Harbor Warden's judgment will prevent unnecessary damage to such vessel or watercraft or obstruction, and the expense incurred by the Harbor Warden in such removal shall be paid by the owner of the vessel, watercraft or obstruction. In case of failure to pay, the City may maintain an action for the recovery of such costs.

8.24.034 Unseaworthy craft. It shall be unlawful for any person or owner of a vessel, watercraft or obstruction to tow into or move such vessel, watercraft or obstruction into Gig Harbor Bay, which prior to movement or tow appears or exists in an unseaworthy condition, uses or needs support from another vessel or watercraft to remain afloat, or otherwise appears to lack the capacity for safe movement through and across navigable waters, other than the following: (a) barges or scows or disabled or buoyant aircraft in tow by a towage company authorized to do business in the state; (b) vessels or watercraft temporarily disabled by accident, collision, or other malfunction but otherwise seaworthy and capable of safe movement, and (c) vessels, watercraft or obstructions being towed by or under the control of the Harbor Warden.

8.24.036 Impoundment Authority. The Harbor Warden may take immediate possession and/or impound and remove any vessel, watercraft or obstruction, when:

A. the operator or person in charge of same reasonably appears incapable of safely operating the vessel, watercraft or obstruction;

B. the operator or person in charge of same refuses or neglects to obey an order of the Harbor Warden to proceed from or to an area following a citation or in an emergency;

C. the operator or person in charge operates a vessel, watercraft or obstruction in a negligent, reckless, or other manner so as to endanger the safety of others or to unreasonably interfere with the navigation of other watercraft and vessels, and the Harbor Warden believes such operation of the vessel, watercraft or obstruction would continue unless possession be taken of the same;

D. the vessel, watercraft or obstruction appears unsafe for water transportation; or

E. the vessel, watercraft or obstruction appears abandoned, and seventy-two (72) hours have elapsed after an order to remove the same has been given by the Harbor Warden as provided in Section 8.24.038(A).

8.24.038 Impound Procedures. The Harbor Warden shall implement the following procedures to impound any vessel, watercraft or obstruction under the authority provided in this chapter:

A. Where immediate removal of the vessel, watercraft or obstruction is not required, the Harbor Warden shall attach a readily visible written notification to the vessel, watercraft or obstruction. The written notification shall contain the following information:

1. the date and time the written notification was attached;
2. a statement that if the vessel, watercraft or obstruction is not removed within seventy-two (72) hours from the time the written notification is attached, it will be taken into custody, moored and stored at the owner's expense;
3. the address and telephone number where additional information may be obtained.

B. The Harbor Warden shall check the records to learn the identity of the last owner of record with the State of Washington. The Warden shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the written notification.

C. If the vessel, watercraft or obstruction is not removed within seventy-two (72) hours from the time the written notification is attached, or in those cases where immediate removal is appropriate (as described in this chapter), the Harbor Warden may take custody of the vessel, watercraft or obstruction and provide for the removal, mooring and/or storage to a place of safety.

D. All vessels, watercraft or obstructions shall be taken to the nearest mooring or storage location that has been inspected by the Police Department.

E. All vessels, watercraft or obstructions shall be handled and returned in substantially the same condition as they existed before being towed.

F. All personal belongings and contents in the vessel, watercraft or obstruction, with the exception of those items of personal property that are registered or titled with the Police Department, shall be kept intact, and shall be returned to the owner of the vessel, watercraft or obstruction during normal business hours and upon request and presentation of a driver's license or other sufficient identification. Personal belongings, with the exception of those items of personal property that are registered or titled with the Department, shall not be sold at auction to fulfill a lien against the vessel, watercraft or obstruction.

G. All personal belongings, with the exception of those items of personal property that are registered or titled with the Police Department, not claimed before the auction, shall be disposed of pursuant to chapter 63.32 or 63.40 RCW.

H. Any person who shows proof of ownership or written authorization from the impounded vessel or watercraft's registration, or of the legal owner of the vessel or watercraft's insurer, may view the vessel or watercraft without charge during normal business hours.

I. The owner of the vessel, watercraft or obstruction is liable for costs incurred in removing, storing and disposing of same, less amounts realized at auction.

J. When the vessel, watercraft or obstruction is impounded, the Harbor Warden shall notify the legal and registered owners of the vessel, watercraft or obstruction if known, of the impoundment and proposed sale of same. The owners of any personal property registered or titled with the Police Department shall be notified of disposition of such property pursuant to Chapters 63.32 or 63.40 RCW, of the impoundment and proposed sale of same. The notification shall be sent by first class mail within twenty-four hours after the impoundment to the last known registered and legal owners of the vehicle, and the owners of any other items of personal property registered or titled with the Police Department. The notice shall include the location, time of the impound, and by whose authority the vehicle was impounded. The notice shall also include the written notice of the right of redemption and opportunity to contest the validity of the impoundment pursuant to the procedures described below.

K. Right to hearing.

1. Any person seeking to redeem an impounded vessel, watercraft or obstruction under this section has a right to a hearing in the district court for the jurisdiction in which the vehicle was impounded, to contest the validity of the impoundment or the amount of towing and storage charges. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the district court within ten days of the date the opportunity was provided for in subsection 8.24.038(J) of this section. If the hearing request is not received by the district court within the ten day period, the right to a hearing is waived and the registered owner is liable for any towing, storage or other impoundment charges permitted under this chapter.

2. The procedures to be followed by the district court for notification to parties, jurisdiction, and determinations to be made by the court shall be the same as set forth in state law for vehicles (RCW 46.55.120(2)(b) through 46.55.120(4), as the same currently exist or may hereafter be amended). In the event that the City has incurred costs relating to the towing, storage and impoundment of the vessel, watercraft or obstruction, the procedures for entry of a

judgment in RCW 46.55.120 (as the same currently exists or may hereafter be amended,) shall apply to the City.

L. Public auction.

1. If, after the expiration of fifteen days from the date of mailing of notice of impoundment and proposed sale required in subsection 8.24.380(J) above to the registered and legal owners, the vessel, watercraft or obstruction remains unclaimed and has not been listed as stolen, then the Harbor Warden shall conduct a sale of the vessel, watercraft or obstruction at public auction. Prior notification of the public auction shall be given by publication in the City's official newspaper, which shall include the auction date, place and time. The notice shall also contain a description of the vessel, watercraft or obstruction, including any make, model, year and registration number and a notification that a three-hour viewing period will be available before the auction. The auction shall be held during daylight hours of a normal business day.

2. The following procedures are required in any public auction of such vessels, watercraft or obstructions:

a. The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

b. The Harbor Warden shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the Police Department, the Warden shall post a clearly visible sign at the Police Department that describes in detail where the auction will be held. At the bidding site, a copy of the newspaper advertisement that lists the vessels, watercraft or obstruction for sale shall be posted.

c. All bidders must be present at the time of auction unless they have submitted to the Harbor Warden, who may or may not choose to use the preauction bid method, a written bid. Written bids may be submitted up to five calendar days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid.

d. The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded.

e. The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder.

f. In case of bidder defaults, the next bidder has the right to purchase the vessel, watercraft or obstruction for the amount of his or her bid.

g. The successful bidder shall apply for title (if applicable) within fifteen days.

h. If the Harbor Warden receives no bid, or if the Warden is the successful bidder at auction, the Warden shall sell the vessel, watercraft or obstruction to a licensed vehicle wrecker, hulk hauler, or scrap processor, or the Warden shall apply for title to the vessel or watercraft.

M. The City shall have a lien upon the impounded vessel, watercraft or obstruction for services provided in the towing, storage and impoundment, unless the impoundment is determined to have been invalid. The lien does not apply to personal property in or upon the vessel, watercraft or obstruction that is not permanently attached to or is not an integral part of the vessel, watercraft or obstruction except for items of personal property registered or titled with the Police Department. The cost of the auction or a buyer's fee may not be added to the amount charged for the vessel, watercraft or obstruction at auction, or added to the lien imposed or any overage due.

8.24.040 Nuisances. Nuisances Designated -- Removal. Sunken vessels, refuse of all kinds, structures or pieces of any structure, dock sweepings, dead fish or parts thereof, dead animals or parts thereof, timber, logs, piles, boom sticks, lumber, boxes, empty containers and oil of any kind floating uncontrolled on the water, and all other substances of a similar nature, are declared to be public nuisances and it shall be unlawful for any person to throw or place in, or cause or permit to be thrown or placed any of the above articles in the Gig Harbor Bay, or upon the shores thereof or in such position that the same may or can be washed into the harbor, either by high tides, storms, floods

or otherwise. Any person causing or permitting such nuisances to be placed in the Gig Harbor Bay shall remove the same, and upon his failure to do so, the same may be removed by the Harbor Warden and the expense thereof shall be paid by and recoverable from the persons creating the nuisance. In all cases, such nuisances may be abated in the manner provided by law including, but not limited to, Chapter 7.48 RCW and Chapter 9.66 RCW. The abatement of any such public nuisance shall not excuse the person responsible therefor from prosecution under this chapter.

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. Codes Adopted by Reference. Pursuant to RCW 35A.12.140, one copy of Chapter 88.12 RCW and one copy of Chapter 352-60 WAC has been filed with the City Clerk and is available for examination by the public.

Section 5. Effective date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY TOWSLEE

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 8/6/97
PASSED BY THE CITY COUNCIL: 9/8/97
PUBLISHED: 9/17/97
EFFECTIVE DATE: 9/22/97
ORDINANCE NO. 766

SUMMARY OF ORDINANCE NO. 766

of the City of Gig Harbor, Washington

On the 8th day of September, 1997, the City Council of the City of Gig Harbor, passed Ordinance No.766. 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 VESSELS AND ACTIVITIES IN GIG HARBOR BAY, REPEALING THE EXISTING HARBOR CODE CHAPTER 8.24 AND ADDING A NEW HARBOR CODE CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE WITH ADDITIONAL DEFINITIONS, DESCRIPTIONS OF VIOLATIONS, PENALTIES AND PROCEDURES FOR IMPOUNDING AND AUCTIONING OF VESSELS UNDER CERTAIN LIMITED CIRCUMSTANCES.

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

DATED this 9th day of September, 1997.

CITY CLERK, MOLLY TOWSLEE