

ORDINANCE NO. 739

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING A IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR USE PERMITS, BUILDING PERMITS, RIGHT-OF-WAY USE PERMITS AND FRANCHISES FOR TELECOMMUNICATIONS FACILITIES, TO BE EFFECTIVE FOR A PERIOD OF ONE YEAR, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, AND DECLARING AN EMERGENCY.

WHEREAS, the new federal Telecommunications Act of 1996 (Pub. L. No. 104-104, 110 Stat. 56, 31-136, hereinafter the "Act"), was designed to remove regulatory barriers and encourage competition among all types of communications companies; and

WHEREAS, the Act ratifies the authority of local government to regulate telecommunications services and carriers, but also limits certain aspects of local governments' authority; and

WHEREAS, the Act allows the Federal Communications Commission to preempt any local governmental regulation which prohibits, or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services (Public Law No. 104-104, 110 Stat. 70, Section 253(a)); and

WHEREAS, the City needs to review its codes and ordinances in a comprehensive fashion to determine whether its existing regulations are consistent with the Act and to adopt new regulations; and

WHEREAS, the City should impose a moratorium barring the acceptance of new applications relating to franchises, use of the public streets by either franchise or right-of-way use permits, building permits and Zoning Code permits (conditional use permits) for antennas for telecommunications services, until the necessary code revisions are complete;

now, therefore, THE CITY COUNCIL OF THE CITY OF GIG HARBOR,

WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purpose of this ordinance, the

following definitions shall apply:

A. **Cable Service:** for the purpose of this ordinance, cable service shall have the same meaning as provided for in the Cable Act, 47 U.S.C. Sec. 532, et seq., as it now exists or is hereafter amended.

B. **Overhead Facilities:** means utility poles, utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

C. **Public Street:** means any highway, street, alley or other public right-of-way for motor vehicle/pedestrian/new motorized vehicle travel under the jurisdiction and control of the City, which has been acquired, established, dedicated or devoted to highway purposes not inconsistent with telecommunications facilities.

D. **Telecommunications Carrier:** means and includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property within the City, used or to be used for the purpose of offering telecommunications service.

E. **Telecommunications Facilities:** means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennae, electronics and other appurtenances used or to be used to transmit, receive, distribute, provide or offer telecommunications services.

F. **Telecommunications Service:** means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, image, graphic, data and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.

G. **Underground facilities:** means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

H. **Utility Facilities:** means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or above the surface of the ground within the streets or rights-of-way of the City, and used or to be used for the purpose of providing utility or Telecommunications Services.

Section 2. Purpose. The purpose of this moratorium is to allow the City adequate time to comprehensively study the new Telecommunications Act, determine whether the City's existing ordinances and codes are consistent with the Act, and develop new ordinances to amend

inconsistencies and/or cover situations not addressed by existing regulations.

Section 3. Moratorium Imposed. The City Council hereby imposes a moratorium on the establishment, location, permitting or franchising of new telecommunications carriers/operators/facilities within the City (by telecommunications carriers or cable operators), whether on, through, over or under private or public property or the public streets, through the use of overhead or underground telecommunications (or utility facilities). During the term of this moratorium (unless earlier terminated by the City Council by ordinance), the City will not accept any right-of-way use permit applications or consider any franchise for telecommunications or cable services/facilities, nor will the City accept any building permit or use permit (Zoning Code) applications for the location, establishment, siting or constructing of any telecommunications facilities in the City.

Section 4. Duration of Moratorium. The moratorium imposed by this ordinance shall be in effect for a period of one year, beginning on the date of the adoption of this ordinance. During this period, the Planning Commission is directed to develop a work plan to study the issue as it relates to applications approved under the Zoning Code. Directors of Planning and Public Works are directed to develop a work plan to study the issue as it relates to applications approved under the Building Code (Title 15, GHMC), Right-of-Way Use Permits (Ch. 12.02 GHMC), franchising and use of the public streets by telecommunications carriers and cable providers.

Both the Commission and the Directors shall develop recommendations for the City's future action to address the Telecommunications Act of 1996, which may include proposed regulations for telecommunications and cable

services or telecommunications facilities in the City. The Commission and the Directors shall return the work plan to the City Council at least two weeks prior to the date of the public hearing scheduled in Section 5 of this Ordinance. In addition, the Commission and the Directors shall return their final recommendations to the City Council within six months of the effective date of this Ordinance.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390, the City Council shall hold a public hearing on this moratorium within 60 days of its adoption, or on December 9, 1996. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium, and either justify its continued imposition or cancel the moratorium.

Section 6. 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 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this ordinance take effect immediately upon passage by a unanimous vote of the members of the City Council, and that the same not be subject to a referendum. Without an immediate moratorium on the City's acceptance of permit applications under the Building and Zoning Codes, processing of such applications by the City could occur under regulations that are inconsistent with the Telecommunications Act of 1996 and regulations that could possibly be preempted by the Federal Communications Commission.

Therefore, the City's moratorium must be imposed immediately to prevent any development rights from vesting and to preserve the City's ability to process applications under valid codes.

Section 8. Effective Date. Pursuant to Gig Harbor Municipal Code Section 1.08.020(B), the City Council may pass an ordinance on the day of its introduction, upon the affirmative vote of a majority plus one of the whole membership of the Council.

Section 9. Publication. This ordinance shall be published by an approved summary consisting of the title.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY ADMINISTRATOR, MARK HOPPEN

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: *October 22, 1996*

PASSED BY THE CITY COUNCIL: *October 29, 1996*

PUBLISHED: *November 6, 1996*

EFFECTIVE DATE: *October 28, 1996*

ORDINANCE NO. 739

SUMMARY OF ORDINANCE NO. 739

of the City of Gig Harbor, Washington

On the 28th day of October, 1996, the City Council of the City of Gig Harbor, passed Ordinance No. 739. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING A IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR USE PERMITS, BUILDING PERMITS, RIGHT-OF-WAY USE PERMITS AND FRANCHISES FOR TELECOMMUNICATIONS FACILITIES, TO BE EFFECTIVE FOR A PERIOD OF ONE YEAR, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, AND DECLARING AN EMERGENCY.

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

DATED this 30th day of October, 1996.

CITY ADMINISTRATOR, MARK HOPPEN