

ORDINANCE NO. 721

AN ORDINANCE OF THE CITY OF GIG HARBOR,  
RELATING TO THE CITY'S ENVIRONMENTAL  
POLICY ORDINANCE AND ADMINISTRATIVE  
PROCEDURES UNDER THE STATE  
ENVIRONMENTAL POLICY ACT (SEPA); AMENDING  
SECTIONS 18.04.020; 18.04.070; 18.04.090;  
18.04.115; 18.04.120; 18.04.140; 18.04.160;  
18.04.230; 18.04.240; 18.04.250; 18.04.260;  
18.04.270; 18.04.280 AND 18.04.290; AND  
REPEALING SECTION 18.04.220 OF THE GIG  
HARBOR MUNICIPAL CODE.

WHEREAS, Title 19 of the GHMC was adopted in January of 1996 in compliance with the regulatory reform act of 1995; and,

WHEREAS, Title 18 of the Gig Harbor Municipal Code requires updating for compliance with Title 19 GHMC, Chapter 43.21C and WAC 197-11; and,

WHEREAS, Title 18 requires updating as several comprehensive plan and City code revisions have been adopted since the last major update of Title 18.

THE CITY COUNCIL OF THE CITY OF GIG HARBOR DO ORDAIN AS  
FOLLOWS

Section 1. Section 18.04.020 is amended as follows:

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.
<u>197-11-225</u>	<u>Purpose, policy applicability and definitions</u>
<u>197-11-228</u>	<u>Overall Integration Procedures</u>
<u>197-11-230</u>	<u>Timing of an integrated GMA/SEPA process</u>
<u>197-11-232</u>	<u>Integration procedures for preliminary planning, environmental analysis and expanded scoping</u>
<u>197-11-235</u>	<u>Integrating documents</u>

Section 2. Section 18.04.070 is amended as follows:

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1. The city will normally complete threshold determinations for proposals that can be based solely upon review of the environmental checklist for the proposal within 45 fourteen (14) days of the determination of a complete application, in accordance with Title 19 of the GHMC date an applicant's adequate application and completed checklist are submitted.

2. When the responsible official requires further information from the applicant or consults with other agencies with jurisdiction:

a. The city will normally request such further information within twenty-eight 28 45 days of receiving an adequate application and completed environmental checklist;

b. The city will normally wait no longer than 15 days for a consulted agency to respond;

c. The responsible official will normally complete the shall issue a threshold determination within at least 15 days of receiving the requested information from the applicant or the consulted agency prior to a public hearing on a proposal, if a public hearing is required. If a public hearing is not required, a threshold determination shall not issue until the public comment period on a notice of application has expired.

3. When the city must initiate further studies, including field investigations, to obtain the information to make the threshold determination, the city will normally complete the studies within 30 days of receiving an adequate complete application and a completed checklist.

4. The city will normally complete threshold determinations on actions where the applicant recommends in writing that an EIS be prepared, because of the probable significant adverse environmental impacts described in the application, within 15 days of receiving an adequate complete application, and completed checklist.

4.5. The responsible official will normally respond to a request for early notice within 10 days. The threshold determination will normally be made within 15 days of receipt of

the changed or clarified proposal, environmental checklist and/or permit application.

Section 3. Section 18.04.090 is amended as follows:

Categorical exemptions - Determination.

A. When the city receives an application for a license, permit, or, in the case of governmental proposals, a department initiates a proposal, the responsible official shall determine whether the license and/or the proposal is exempt from environmental review under this chapter. The determination that a proposal is exempt shall be final and not subject to administrative review appeal. If a proposal is exempt, none of the procedural requirements of this chapter shall apply to the proposal.

B. In determining whether or not a proposal is exempt, the responsible official shall make certain the proposal is properly defined and shall identify the governmental license or permit required. If a proposal includes exempt and nonexempt actions, the responsible official shall determine the lead agency even if the license application that triggers the consideration is exempt.

\* \* \*

4. A planned action as defined in RCW 43.21C.031(2) does not require a threshold determination or the preparation of an environmental impact statement under this chapter, but is subject to environmental review and mitigation as provided in this chapter.

Section 4. Section 18.04.115 is amended as follows:

Completed environmental checklist defined.

A. An environmental checklist is deemed completed when the following information is provided:

1. All information as requested in the checklist is provided, including complete responses to all questions in the checklist.
2. All plans and illustrations as required per the applicable city code are submitted with the environmental checklist.
3. The required number of copies of the checklist and associated plans and illustrations are submitted, as per the applicable city code.
4. Checklist is properly signed and dated.
5. All applicable fees as established in the City's fee schedule are paid.

B. Incomplete or inaccurate responses to the questions within the checklist shall be grounds for reserving a threshold determination on a proposal, including the scheduling of any public hearings as may be required, until such time as the information is provided by the applicant. Any period during which an applicant has been requested by the city to correct plans, perform required studies or provide additional required information shall not be included in the 120 day project permit processing time.

Section 5. Section 18.04.120 is amended as follows:

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F. Any non-exempt permit or proposal may be conditioned or denied under SEPA, subject to the limitations in WAC 197-11-660 and GHMC 18.04.210.

G.F. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions

of approval of the licensing decision and may be enforced in the same manner as any term or condition of the permit or enforced in any matter specifically prescribed by the city. Failure to comply with the designated mitigation measures shall be grounds for suspension and/or revocation of any license issued.

H.G. If the city's tentative decision on a permit or approval does not include mitigation measures that were incorporated in mitigated DNS for the proposal, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) relating to the withdrawal of a DNS.

I.H. The city's written response under subsection (C) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification or changes to a proposal, as opposed to a written request for early notice, shall not bind the city to consider the clarifications or changes in its threshold determination.

\* \* \*

Section 6. Section 18.04.140 is amended as follows:

\* \* \*

B. The draft and final EIS and SEIS shall be prepared, at the city's option by the city staff, the applicant or by a consultant approved by the city. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution. The fee for the preparation of a draft and final EIS shall be as established under Chapter 3.30 of the GHMC.

\* \* \*

Section 7. Section 18.04.160 is amended as follows:

\* \* \*

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

1. Posting the site of the proposed action ~~and at Gig Harbor City Hall;~~
2. SEPA register;
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 ~~10~~ 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 ~~for site specific proposals 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;
3. ~~Publication in the official newspaper of the city of Gig Harbor;~~
4. ~~Other methods as deemed necessary and appropriate by the responsible official, provided that a public hearing on a nonproject proposal must be preceded by written, published notice in accordance with WAC 197-11-502(6)(b) at least 10 days prior to the hearing.~~

\* \* \*

Section 8. Section 18.04.220 is amended as follows:

\* \* \*

B. The city adopts by reference the policies in the following city codes, ordinances, resolutions and plans, as now existing or hereinafter amended, as a possible basis for the exercise of substantive authority in the conditioning or denying of proposals.

1. Chapter 43.21C RCW - State Environmental Policy Act.
2. Title 5 - Business Licenses and Regulations.
3. Title 6 - Animals.
4. Title 8 - Health and Safety.
5. Title 10 - Vehicles and Traffic.
6. Title 12 - Streets and Sidewalks.
7. Title 13 - Water and Sewers.
8. Title 15 - Buildings and Construction.
9. Title 16 - Subdivision.
10. Title 17 - Zoning.
11. The City of Gig Harbor Comprehensive Plan, 1986
12. The City of Gig Harbor Shoreline Master Program.
13. Six-Year Street Program.
14. Comprehensive Water Plan (1986)
15. Comprehensive Sewer Plan
16. Traffic Impact Resolution, Council Resolution No. 311
17. Chapter 18.08 - Wetlands Management Ordinance
18. Chapter 18.12 - Critical Areas Ordinance
19. City of Gig Harbor Public Works Standards

Section 9. Section 18.04.230 is amended as follows:

18.04.230 Appeals.

A. Any interested person may appeal the adequacy of a final threshold determination, final EIS and the conditioning or denial of a requested action made by a nonelected city official pursuant to the procedures set forth in this section. No other SEPA appeal shall be allowed. Appeal on SEPA procedures shall be limited to review of a final threshold determination and final EIS. The appeal on a final threshold determination may occur prior to an agency's final decision on a proposed action.

B. All appeals filed pursuant to this section must be filed in writing with the planning director within 10 calendar days of the date of the decision appealed from.

C. On receipt of a timely written notice of appeal, the planning director shall transmit said appeal to the appropriate hearing examiner or city council body, and request that a date for considering the appeal be established. Appeals shall be considered as follows:

1. Procedural Determinations. Appeals of the final threshold determination and a final environmental impact statement shall be made to the city hearing examiner pursuant to the provisions of Chapter 17.10 GHMC. The date of the hearing on the appeal shall be the same as

that date established for any underlying Type III permit application. For a determination of significance (DS), the date of the hearing shall be as established by the planning director but in no case shall be more than forty-five (45) days from the date of filing of the appeal. The hearing examiner's decision on these matters is final unless an appeal is filed with the superior court pursuant to subsection H of this section section 19.06.006.

\* \* \*

H. The time limitations and procedures for judicial appeals of administrative decisions shall be as set forth in WAC 197-11-680(4) and Title 19 of the GHMC, which is adopted by reference in this section. Only an aggrieved party may file an appeal in accordance with the procedures established under Title 19 of the GHMC.

Section 10. Section 18.04.240 is amended as follows:

18.04.240 Notice/statute of limitations.

A. The city, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

~~B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the city clerk, applicant or proponent pursuant to RCW 43.21C.080.~~

Section 11. Section 18.04.250 is amended 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.
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.
<del>197-11-748</del>	<del>Environmentally sensitive areas</del>
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.
197-11-776	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 12. Section 18.04.260 is amended as follows:

Compliance with SEPA - 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:

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
<u>197-11-908</u>	<u>Critical areas</u>
197-11-916	Application to ongoing actions.
197-11-920	Agencies with environmental expertise.
197-11-922	Lead agency rules.
197-11-924	Determination the lead agency.
197-11-926	Lead agency for governmental proposals.
197-11-928	Lead agency for public and private proposals.

197-11-930 Lead agency for private projects with one agency with jurisdiction.

197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.

197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.

197-11-936 Lead agency for private projects requiring licenses from more than one state agency.

197-11-938 Lead agencies for specific proposals.

197-11-940 Transfer of lead agency status to a state agency.

197-11-942 Agreements on lead agency status.

197-11-944 Agreements on division of lead agency duties.

197-11-946 DOE resolution of lead agency disputes.

197-11-948 Assumption of lead agency status.

Section 13. Section 18.04.270 is amended as follows:

Environmentally sensitive Critical areas.

The following are adopted as environmentally sensitive critical areas, in accordance with WAC 197-11-908:

A. Wetlands identified and defined pursuant to the City of Gig Harbor Wetland Management Ordinance, Chapter 18.08 of the GHMC.

1. The Pierce County wetland atlas, 1990;  
2. The United States Fish and Wildlife Wetland Inventory Maps for the Gig Harbor Peninsula, 1987;  
3. The United States Department of Agriculture Soil Survey for Pierce County (1982);  
4. The criteria for wetlands delineation as established pursuant to Chapter 18.08 GHMC.

Section 14. Section 18.04.280 is amended as follows:

Fees.

The city shall require the following fees as provided for under Chapter 3.30 of the GHMC for its activities in accordance with the provisions of this chapter.:

A. Threshold Determination. For every environmental checklist the city will review when it is lead agency, the city shall collect a fee of \$40.00 from the proponent of the proposal prior to undertaking the threshold determination. This fee shall not apply if the checklist is required only as a result of GHMC 18.04.040. The time periods provided by this chapter for making a threshold determination shall not begin to run until payment of fees. When the city assists the applicant or completes the environmental checklist at the applicant's request or under GHMC 18.04.110(E) an additional fee equal to the estimated actual cost of providing the assistance shall be collected.

B. Environmental Impact Statement.

1. When the city is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of the city, the city may charge and collect a reasonable fee from any applicant to cover costs incurred, including

~~overhead, by the city in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.~~

~~2. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by the city.~~

~~3. The applicant shall pay the projected amount to the city prior to commencing work. The city will refund the excess, if any, at the completion of the EIS. If the city's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under subparagraphs (1) or (2) of this subsection which remain after incurred costs, including overhead, are paid.~~

~~C. The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal.~~

~~D. The city may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by Chapter 42.17 RCW.~~

~~E. If review of the application involves scientific, technical or specialized knowledge beyond the capabilities of city staff, the city may hire experts to review the application and shall charge the applicant for such expense.~~

Section 15. Section 18.04.290 is amended as follows:

Forms - Adoption by reference.

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

- 197-11-960 Environmental checklist.
- 197-11-965 Adoption notice.
- 197-11-970 Determination of nonsignificance (DNS).
- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- ~~197-11-990 Notice of action.~~

Section 16. Section 18.04.210 is hereby repealed.

Section 17. 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 18. 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:

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MAYOR GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

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CITY ADMINISTRATOR, MARK HOPPEN

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_

FILED WITH THE CITY CLERK: May 8, 1996

PASSED BY THE CITY COUNCIL: May 24, 1996

PUBLISHED: June 5, 1996

EFFECTIVE DATE: June 10, 1996

SUMMARY OF ORDINANCE NO.

of the City of Gig Harbor, Washington

On the 28th day of May, 1996, the City Council of the City of Gig Harbor, passed Ordinance No. 721. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO THE CITY'S ENVIRONMENTAL POLICY ORDINANCE AND ADMINISTRATIVE PROCEDURES UNDER THE STATE ENVIRONMENTAL POLICY ACT (SEPA); AMENDING SECTIONS 18.04.020; 18.04.070; 18.04.090; 18.04.115; 18.04.120; 18.04.140; 18.04.160; 18.04.230; 18.04.240; 18.04.250; 18.04.260; 18.04.270; 18.04.280 AND 18.04.290; AND REPEALING SECTION 18.04.220 OF THE GIG HARBOR MUNICIPAL CODE.

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

DATED this 29th day of May, 1996.

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CITY ADMINISTRATOR, MARK HOPPEN