

ORDINANCE NO. 705

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ZONING CODE ENFORCEMENT, ADOPTING A NEW CHAPTER 17.07 IN THE GIG HARBOR MUNICIPAL CODE FOR THE ENFORCEMENT OF ZONING CODE AND SUBDIVISION CODE, SEPARATING THE CODE ENFORCEMENT PROCESS FOR THESE VIOLATIONS FROM BUILDING CODE ENFORCEMENT; ESTABLISHING THE PLANNING DIRECTOR AS THE OFFICIAL CHARGED WITH ENFORCEMENT OF TITLES 17 AND 16, DESCRIBING VIOLATIONS AND SETTING PENALTIES FOR SUCH VIOLATIONS, AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 15.18.002, 15.18.004, 15.18.006, 15.08.012, 15.18.016, 15.18.018 AND 15.18.020.

WHEREAS, the City's Zoning Code has been enforced in the past through the Building and Fire Code enforcement procedures, as set forth in Chapter 15.18, and

WHEREAS, the City desires to continue to enforce the Zoning Code, but to place responsibility for its enforcement with the same department and the same department head responsible for its administration, and

WHEREAS, the City further desires to consolidate the enforcement process for the Subdivision Code into this new enforcement chapter, now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO

ORDAIN AS FOLLOWS:

Section 1. Section 15.18.002 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.18.002 Violations.

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G. Zoning Code Violation.

1. ~~It is a violation of Title 17 for any person to initiate, maintain or cause to be initiated or maintained the use of any structure, land or property within the City of Gig Harbor without first obtaining the permits or authorizations required for the use by Title 17.~~

2. ~~It is a violation of Title 17 for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the City of Gig Harbor in any manner that is not permitted by the terms of any permit or authorization issued pursuant to Title 17,~~

~~provided that the terms or conditions are explicitly stated on the permit or the approved plans.~~

HG. Additional Violations. In addition to the above, it is a violation of Title 15 ~~or 17~~ to:

1. remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter;
2. to misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction application.
3. fail to comply with any of the requirements of Title 15, ~~or 17~~ including any requirement of the Uniform Codes and state codes adopted by reference herein.

Section 2. Section 15.18.004 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.18.004 Duty to Enforce.

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B. Upon presentation of proper credentials, the Building Official may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the duties imposed by Title 15 ~~or 17~~.

* * *

E. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of Title 15 ~~or 17~~.

* * *

Section 3. Section 15.18.006 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.18.006 Investigation and notice of violation.

A. Investigation. The Building Official shall investigate any structure or use which the Building Official reasonably believes does not comply with the standards and requirements of Title 15 ~~or 17~~.

B. Notice of Violation. If after investigation, the Building Official determines that the standards or requirements of Title 15 ~~or 17~~ have been violated, the Building Official shall serve

a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall contain the following information:

1. A separate statement of each standard, code provision or requirement violated;
2. What corrective action, if any, is necessary to comply with the standards, code provision or requirements;
3. A reasonable time for compliance;
4. A statement that if the violation is not already subject to criminal prosecution, that any subsequent violations may result in criminal prosecution as provided in Chapter 15.18.018.

* * *

Section 4. Section 15.18.012 of the Gig Harbor Municipal Code is hereby amended to read as follows:

~~17.09.012~~ 15.18.012 Emergency Order. Whenever any use or activity in violation of Title 15 ~~or 17~~ threatens the health and safety of the occupants of the premises or any member of the public, the Building Official may issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall specify the time for

compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an Emergency Order shall constitute a violation of this chapter.

Any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Building Official is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

Section 5. Section 15.18.014 of the Gig Harbor Municipal Code is hereby amended as follows:

* * *

D. The decision of the hearing examiner shall be final and conclusive. In order to appeal the decision of the hearing examiner, a person with standing to appeal a decision imposing criminal penalties must appeal to the appropriate court with jurisdiction, and a person with standing to appeal a decision imposing civil penalties must make application for a land use petition under chapter 36.70C RCW within twenty-one (21) days of the issuance of the examiner's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant. ~~an aggrieved party or person must make application for a writ of review to the Pierce County superior court.~~ ...

* * *

Section 6. Section 15.18.016 of the Gig Harbor Municipal Code is hereby amended to

read as follows:

15.18.016 Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of Title 15 ~~or 17~~ shall be subject to a cumulative penalty in the amount of Fifty Dollars (\$50.00) per day for each violation from the date set for compliance until compliance with the order is achieved.

* * *

Section 7. Section 15.18.018 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.18.018 Criminal Penalties.

A. Any person violating or failing to comply with any of the provisions of Title 15 ~~or 17~~ and who has had a judgment entered against him or her pursuant to Chapter 15.18.016 or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000.00) or be imprisoned for a term not exceeding one (1) year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of Title 15 ~~or 17~~ shall constitute a separate offense.

B. The above criminal penalty may also be imposed:

1. For any other violation of Title 15 ~~or 17~~ for which corrective action is not possible; and

2. For any wilful, intentional, or bad faith failure or refusal to comply with the standards or requirements of Title 15 ~~or 17~~.

* * *

Section 8. Section 15.18.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.18.020 Additional Relief. The Building Official may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of Title 15 ~~or 17~~ when civil or criminal penalties are inadequate to effect compliance.

Section 9. A new chapter 17.07 of the Gig Harbor Municipal Code is hereby adopted to read as follows:

CHAPTER 17.07 ENFORCEMENT

Chapters:

- 17.07.002 Violations**
- 17.07.004 Duty to Enforce**
- 17.07.006 Investigation and Notice of Violation**
- 17.07.008 Time to Comply**

- 17.07.010 Stop Work Order
- 17.07.012 Emergency Order
- 17.07.014 Review by Director
- 17.07.016 Civil Penalty
- 17.07.018 Criminal Penalties
- 17.07.020 Additional Relief
- 17.07.022 Subdivision Violations and Penalties

17.07.002 Violations.

A. It is a violation of Titles 17 and/or 16 for any person to initiate, maintain or cause to be initiated or maintained the use of any structure, land or property within the City of Gig Harbor without first obtaining the permits or authorizations required for the use by the aforementioned codes.

B. It is a violation of Titles 17 and/or 16 for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the City of Gig Harbor in any manner that is not permitted by the terms of any permit or authorization issued pursuant to the aforementioned codes, provided that the terms or conditions are explicitly stated on the permit or the approved plans.

C. In addition to the above, it is a violation of Titles 17 and/or 16 to:

1. remove or deface any sign, notice, complaint or order required by or posted in accordance with the aforementioned codes;

2. to misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization.

3. fail to comply with any of the requirements of Titles 17 and/or 16.

17.07.004 Duty to Enforce.

A. It shall be the duty of the Planning Director to enforce this Chapter. The Planning Director may call upon the police, fire, building, public works or other appropriate City departments to assist in enforcement. As used in this chapter, "Planning Director" shall also mean his or her duly authorized representative.

B. Upon presentation of proper credentials, the Planning Director may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the duties imposed by Titles 17 and/or 16.

C. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

D. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of Titles 17 and/or 16.

E. No provision of or any term used in this chapter is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

17.07.006 Investigation and notice of violation.

A. Investigation. The Planning Director shall investigate any structure or use which the Planning Director reasonably believes does not comply with the standards and requirements of Titles 17 and/or 16.

B. Notice of Violation. If after investigation, the Planning Director determines that the standards or requirements of Titles 17 and/or 16 have been violated, the Planning Director shall serve a notice of violation upon the owner, tenant or other person responsible for the condition. The notice of violation shall contain the following information:

1. A separate statement of each standard, code provision or requirement violated;

2. What corrective action, if any, is necessary to comply with the standards, code provision or requirements;

3. A reasonable time for compliance;

4. A statement that (for zoning code violations), if the violation is not already subject to criminal prosecution, that any subsequent violations may result in criminal prosecution as provided in Chapter 17.07.018.

C. Service. The notice shall be served on the owner, tenant or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the Planning Director makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two (2) consecutive weeks in the City's Official Newspaper; and

2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.

D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Other Actions May Be Taken. Nothing in this Chapter shall be deemed to limit or preclude any action or proceeding pursuant to Sections 17.07.010, 17.07.012, 17.07.016, 17.07.018, 17.07.020 or 17.07.022.

F. Optional Notice to Others. The Planning Director may mail, or cause to be delivered to all residential and/or nonresidential rental units in the structure or post at a conspicuous place on the property, a notice which informs each recipient or resident about the notice of violation, Stop Work Order or Emergency Order and the applicable requirements and procedures.

G. Amendment. A notice or Order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

17.07.008 Time to Comply.

A. Determination of Time. When calculating a reasonable time for compliance, the Planning Director shall consider the following criteria;

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action.
4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and
5. Any other circumstances beyond the control of the responsible party.

B. Order Becomes Final UnlessAppealed. Unless an appeal is filed with the Planning Director for hearing before the Hearing Examiner in

accordance with Section 17.10.160, the notice of violation shall become the final order of the Planning Director. A copy of the notice shall be filed with the Pierce County Auditor. The Planning Director may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

17.07.010 Stop Work Order. Whenever a continuing violation of this Code will materially impair the Planning Director's ability to secure compliance with this Code, or when the continuing violation threatens the health or safety of the public, the Planning Director shall issue a Stop Work Order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a Stop Work Order shall constitute a violation of this chapter.

17.07.012 Emergency Order. Whenever any use or activity in violation of Title 17 and/or 16 threatens the health and safety of the occupants of the premises or any member of the public, the Planning Director may issue an Emergency Order directing that the use or activity be discontinued and the condition causing the threat to the public health and safety be corrected. The Emergency Order shall specify the time for compliance and shall be posted in a conspicuous place on the property, if posting is physically possible. A failure to comply with an Emergency Order shall constitute a violation of this chapter.

Any condition described in the Emergency Order which is not corrected within the time specified is hereby declared to be a public nuisance and the Planning Director is authorized to abate such nuisance summarily by such means as may be available. The cost of such abatement shall be recovered from the owner or person responsible or both in the manner provided by law.

17.07.014 Review by Hearing Examiner.

A. Any person significantly affected by or interested in a notice of violation issued by the Planning Director pursuant to Section 17.07.006 may obtain an appeal of the notice by requesting such appeal within fifteen calendar (15) days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five p.m. (5:00 p.m.) on the next business day. The request shall be in writing, and upon receipt of the appeal request, the Planning Director shall forward the request to the Office of the Hearing Examiner.

B. At or after the appeal hearing, the Hearing Examiner may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information;
4. Modify the notice of violation, which may include an extension of the compliance date.

C. The Hearing Examiner shall issue a Decision within ten (10) days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person(s) named on the notice of violation, mailed to the complainant, if possible, and filed with the Pierce County Auditor.

D. The decision of the hearing examiner shall be final and conclusive. In order to appeal the decision of the hearing examiner, a person with standing to appeal a decision imposing criminal penalties must appeal to

the appropriate court with jurisdiction, and a person with standing to appeal a decision imposing civil penalties must make application for a land use petition under chapter 36.70C RCW within twenty-one (21) days of the issuance of the examiner's decision. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant.

17.07.016 Civil Penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person violating or failing to comply with any of the provisions of Title 17 shall be subject to a cumulative penalty in the amount of Fifty Dollars (\$50.00) per day for each violation from the date set for compliance until compliance with the order is achieved.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Planning Director shall notify the City Attorney in writing of the name of any person subject to the penalty, and the City Attorney shall, with the assistance of the Planning Director, take appropriate action to collect the penalty.

C. The violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the wilful act, or neglect, or abuse of another; or

2. That correction of the violation was commenced promptly upon receipt of the notice thereof, but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to

the subject structure, or other condition or circumstance beyond the control of the defendant.

17.07.018. Criminal Penalties.

A. Any person violating or failing to comply with any of the provisions of Title 17 and who has had a judgment entered against him or her pursuant to Chapter 17.07.016 or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000.00) or be imprisoned for a term not exceeding one (1) year or be both fined and imprisoned. Each day of noncompliance with any of the provisions of Title 17 shall constitute a separate offense.

B. The above criminal penalty may also be imposed:

1. For any other violation of Title 17 for which corrective action is not possible; and
2. For any wilful, intentional, or bad faith failure or refusal to comply with the standards or requirements of Title 17.

17.07.020. Additional Relief. The Planning Director may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of Title 17 when civil or criminal penalties are inadequate to effect compliance.

17.07.022. Subdivision Violations.

A. Any person, firm, corporation or association or any agency of any person, firm corporation or association who violates any provision of Title 16,

Subdivisions, relating to the sale, offer for sale, lease or transfer of any lot, tract, or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation of any provision of Title 16, Subdivisions, shall be deemed a separate and distinct offense.

B. Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of Title 16, Subdivisions, or any term or condition of plat approval prescribed for the plat by the city, then the city attorney may commence an action to restrain and enjoin such use and compel compliance with the provisions of Title 16, or with such terms and conditions. The costs of such action shall be taxed against the violator.

Section 9. 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 10. 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 ADMINISTRATOR, MARK HOPPEN

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: January 8, 1996

PASSED BY THE CITY COUNCIL: January 22, 1996

PUBLISHED: January 31, 1996

EFFECTIVE DATE: February 5, 1996

ORDINANCE NO. 705