

ORDINANCE NO. 672

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO CODE ENFORCEMENT, ADDING A NEW CHAPTER 15.18 ON ENFORCEMENT FOR THE UNIFORM BUILDING, MECHANICAL, PLUMBING AND FIRE CODES, THE STATE ENERGY AND INDOOR AIR QUALITY CODES, ALL AS SET FORTH IN TITLE 15; AND FOR ENFORCEMENT OF THE ZONING CODE, TITLE 17; DESCRIBING VIOLATIONS AND PENALTIES THEREFOR; REPEALING GHMC SECTIONS 15.06.055, 15.08.025, 15.08.030, 15.10.030, 15.10.035, 15.12.110, 15.32.011, 15.32.012 AND CHAPTER 15.34; AND AMENDING SECTIONS 15.08.040, 15.10.038 AND 17.10.160 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, recent amendments to RCW 35A.11.020 require the City to change its enforcement procedures and penalties for Uniform Fire and Plumbing Code violations to be consistent with state law; and

WHEREAS, Chapter 15.18 of the Gig Harbor Municipal Code must therefore be amended to reflect consistent penalties for state and local code violations, and to contain an effective enforcement scheme for the remainder of the codes; now, therefore,

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

Section 1. Section 15.06.055 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. Section 15.08.025 of the Gig Harbor Municipal Code is hereby repealed.

Section 3. Section 15.08.030 of the Gig Harbor Municipal Code is hereby repealed.

Section 4. Section 15.08.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.08.040 Appeals of Administrative Determinations. The Building Code Advisory Board shall hear and decide appeals of orders, decisions or determinations made by the Building Official relative to the application and interpretation of this code, pursuant to chapter 15.02. The Board shall have no authority to hear appeals of enforcement actions, which shall be directed to the Hearing Examiner, as set forth in chapter 15.18.

Section 5. Section 15.10.030 of the Gig Harbor Municipal Code is hereby repealed.

Section 6. Section 15.10.035 of the Gig Harbor Municipal Code is hereby repealed.

Section 7. Section 15.10.038 of the Gig Harbor Municipal Code is hereby amended to read as follows:

15.10.038 Appeals of Administrative Determinations. The Building Code Advisory Board shall hear and decide appeals of orders, decisions or determinations made by the Building Official relative to the application and interpretation of this code, pursuant to chapter 15.02. The Board shall have no authority to hear appeals of enforcement actions, which shall be directed to the Hearing Examiner, pursuant to chapter 15.18.

Section 8. Section 15.12.110 of the Gig Harbor Municipal Code is hereby repealed.

Section 9. Section 15.32.011 of the Gig Harbor Municipal Code is hereby repealed.

Section 10. Section 15.32.012 of the Gig Harbor Municipal Code is hereby repealed.

Section 11. Chapter 15.34 of the Gig Harbor Municipal Code is hereby repealed.

Section 12. Chapter 15.18 of the Gig Harbor Municipal Code is repealed. A new Chapter 15.18 shall be added to the Gig Harbor Municipal Code to read as follows:

CHAPTER 15.18

ENFORCEMENT

Sections:

15.18.002	Violations
15.18.004	Duty to Enforce
15.18.006	Investigation and Notice of Violation
15.18.008	Time to Comply
15.18.010	Stop Work Order
15.18.012	Emergency Order
15.18.014	Review by Director
15.18.016	Extension of Compliance Date
15.18.018	Civil Penalty
15.18.020	Criminal Penalties
15.18.022	Additional relief

15.18.002 Violations.

A. Building Code Violation. Building code violations are described in the Uniform Building Code (UBC) Sec. 205, as the same now exists or may hereafter be amended.

B. Plumbing Code Violation. Plumbing code violations are described in the Uniform Plumbing Code (UPC) Sec. 20.3(a), as the same now exists or may hereafter be amended.

C. Mechanical Code Violation. Mechanical code violations are described in the Uniform Mechanical Code (UMC) Sec. 204, as the same now exists or may hereafter be amended.

D. Fire Code Violation. Fire code violations are described in the Uniform Fire Code (UFC) Article 3, as the same now exists or may hereafter be amended.

E. Energy Code Violation. Energy code violations are described in Washington Administrative Code (WAC) Section 51-11-0106, as the same now exists or may hereafter be amended.

F. Indoor Air Quality Violation. Indoor Air Quality code violations are described in WAC Section 51-13-107, as the same now exists or may hereafter be amended.

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.

H. 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 authorization.

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.

15.18.004 Duty to Enforce.

A. It shall be the duty of the Building Official to enforce this Chapter. The Building Official may call upon the police, fire, planning and community development or other appropriate City departments to assist in enforcement. As used in this chapter, "Building Official" shall also mean his or her duly authorized representative.

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.

C. In lieu of the enforcement procedures set forth in this chapter, the Building Official may implement the enforcement procedures set forth in any of the Uniform Codes adopted by reference in Title 15.

D. 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.

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 and 17.

F. 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.

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 Section 15.18.018.

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 Building Official 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 section shall be deemed to limit or preclude any action or proceeding pursuant to Sections 15.18.010, 15.18.012, 15.18.018 or 15.18.020.

F. Optional Notice to Others. The Building Official 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.

15.18.008 Time to Comply.

A. Determination of Time. When calculating a reasonable time for compliance, the Building Official 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 Unless Appealed. Unless an appeal is filed with the Building Official for hearing before the Hearing Examiner in accordance with Section 15.18.014, the notice of violation shall become the final order of the Building Official. A copy of the notice shall be filed with the Pierce County Auditor. The Building Official 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.

15.18.010 Stop Work Order. Whenever a continuing violation of this Code will materially impair the Building Official's ability to secure compliance with this

Code, or when the continuing violation threatens the health or safety of the public, the Building Official may 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.

17.09.012 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.

15.18.014 Review by Hearing Examiner.

A. Any person significantly affected by or interested in a notice of violation issued by the Building Official pursuant to Section 15.18.006 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 Building Official shall

forward the request to the Office of the Hearing Examiner, pursuant to Chapter 17.10 GHMC.

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 Department of Records and Elections of Pierce County.

D. The decision of the Hearing Examiner shall be final and conclusive. In order to appeal the decision of the Hearing Examiner, an aggrieved party or person must make application for a writ of review to the Pierce County Superior Court. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant.

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.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Building Official 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 Building Official, 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.

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 Section 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.

C. Uniform Fire Code and Uniform Plumbing Code Violations. A violation of the Uniform Fire Code and Uniform Plumbing Code is a misdemeanor, and every person so convicted shall be punished by imprisonment for a maximum term of not more than ninety days, or by a fine in an amount of not more than one thousand dollars or both such imprisonment and fine. Each day of noncompliance with any of the provisions of the Uniform Fire or Uniform Plumbing Code shall constitute a separate offense.

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 13. Section 17.10.160(A) of the Gig Harbor Municipal Code is hereby

amended to read as follows:

17.10.160 Appeal.

A. Except in those instances where an appeal of the hearing examiner's decision shall be made upon an application for a writ of review in superior court, any party who feels aggrieved by the examiner's decision may submit an appeal in writing to the department of community development within 14 days from the date the final decision of the examiner is rendered, requesting a review of such decision.

* * *

Section 14. 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 15. 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:

Gretchen A. Wilbert, Mayor

ATTEST/AUTHENTICATED:

Mark E. Hoppen, City Administrator

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 5/18/94

PASSED BY THE CITY COUNCIL: 6/13/94

PUBLISHED: 6/22/94

EFFECTIVE DATE: 6/27/94

SUMMARY OF ORDINANCE NO. 672

of the City of Gig Harbor, Washington

On the 13th day of June, 1994, the City Council of the City of Gig Harbor, passed Ordinance No. 672. 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 CODE ENFORCEMENT, ADDING A NEW CHAPTER 15.18 ON ENFORCEMENT FOR THE UNIFORM BUILDING, MECHANICAL, PLUMBING AND FIRE CODES, THE STATE ENERGY AND INDOOR AIR QUALITY CODES, ALL AS SET FORTH IN TITLE 15; AND FOR ENFORCEMENT OF THE ZONING CODE, TITLE 17; DESCRIBING VIOLATIONS AND PENALTIES THEREFOR; REPEALING GHMC SECTIONS 15.06.055, 15.08.025, 15.08.030, 15.10.030, 15.10.035, 15.12.110, 15.32.011, 15.32.012 AND CHAPTER 15.34; AND AMENDING SECTIONS 15.08.040, 15.10.038, AND 17.10.160 OF THE GIG HARBOR MUNICIPAL CODE.

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 the order is complied with, except as provided in subsection B of this section.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the City. The Building Official 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 Building Official, 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.

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 Section 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.

C. Uniform Fire Code and Uniform Plumbing Code penalties. Violations of the Uniform Fire Code or Uniform Plumbing Code are misdemeanors, and every person so convicted shall be punished by imprisonment for a maximum term of not more than ninety days, or by a fine in an amount not more than one thousand dollars or both such imprisonment and fine. Each day of noncompliance with any of the provisions of Title 15 or 17 shall constitute a separate offense.

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.

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

DATED this 14th day of June, 1994.

CITY ADMINISTRATOR, MARK HOPPEN