

ORDINANCE NO. 489

**AN ORDINANCE** of the City of Gig Harbor, Washington, creating office of Hearing Examiner; establishing qualification for the position; providing for the appointment of a suitable person to the position; defining the duties of the position; providing basic procedures for hearings before the Examiner; providing for review and or appeal of Examiner's decision; providing for appeals from City Council actions following the review of decisions of the Examiner; and repealing any conflicting ordinances.

The City Council of the City of Gig Harbor, Washington, DO **ORDAIN** as follows:

Section 1. TITLE. This Ordinance shall be hereinafter known as the "Land Use Hearing Examiner Ordinance" or "Hearing Examiner", may be cited as such, will be hereinafter referred to as "This Ordinance" and the same shall be and constitute a new section of Chapter 17 of the Gig Harbor Municipal Code.

Section 2. GENERAL OBJECTIVES. It is the general objective of this Ordinance to:

1. Provide a single, efficient, integrated land use regulatory hearing system.
2. Render land use regulatory decisions and recommendations to the City Council.
3. Provide a greater degree of due process in land use regulatory hearings.
4. Separate the land use policy formulation and the land use policy administration processes.

Section 3. CREATION OF LAND USE HEARING EXAMINER. The office of the Land Use Hearing Examiner, hereinafter referred to as Examiner, is hereby created. The Examiner shall interpret, review, and implement land use regulations as provided in this Ordinance and other ordinances. The term Examiner shall likewise include the Examiner Pro-tem.

Section 4. APPOINTMENT AND TERMS. The Hearing Examiner and Examiner Pro-tem shall be appointed by the mayor and confirmed by the City Council.

Section 5. COMPENSATION. The Examiner and Examiner Pro-tem may, at the discretion of the City Council, be classified as permanent part-time employees, or the City may contract with the Examiner and Examiner Pro-tem for the performance of duties described herein. The compensation to be paid the

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Examiner and Examiner Pro-tem shall be that established in the Annual City Budget.

Section 6. QUALIFICATIONS. The Examiner and Examiner Pro-tem shall be appointed solely with regard to their qualifications for the duties of the office which shall include, but not be limited to persons with appropriate educational experience, such as an Urban Planner, with at least five years experience, persons who have extensive experience in planning work in a responsible capacity, persons with legal experience, particularly where that experience is in the area of land use management or administrative law.

Section 7. EXAMINER PRO-TEM -- QUALIFICATION AND DUTIES. The Examiner Pro-tem shall, in the event of the absence or the inability of the Examiner to act, have all the duties and powers of the Examiner.

Section 8. HEARING EXAMINER -- CONFLICT OF INTEREST AND FREEDOM FROM IMPROPER INFLUENCE. The Examiner shall not conduct or participate in any hearing or decision in which the Examiner has a direct or indirect personal interest which might exert such influence upon the Examiner that might interfere with his or her decision making process. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict. The hearing shall then be conducted by the Examiner Pro-Tem.

Participants in the land use regulatory process have the right, insofar as possible, to have the Examiner free from personal interest or pre-hearing contacts on land use regulatory matters considered by him or her. It is recognized that there is a countervailing public right to free access to public officials on any matter. If such personal or pre-hearing interest contact impairs the Examiner's ability to act on the matter, such person shall so state and shall abstain therefrom to the end that the proceeding is fair and has the appearance of fairness.

Section 9. FREEDOM FROM IMPROPER INFLUENCE. No Council member, City official, or any other person shall attempt to interfere with, or improperly influence the Examiner in the performance of his or her designated duties.

Section 10. DUTIES OF THE EXAMINER.

1. Applications. The Examiner shall receive and examine available information, conduct public hearings, prepare a record thereof, and enter findings of fact and conclusions based upon those facts, which conclusions

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shall represent the final action on the application, unless appeal, as hereinbelow specified, for the following types of applications:

- a) Conditional Use Permits
- b) Variances
- c) Appeals of Administrative Short Plats
- d) Appeals from administrative determination of the city's land use regulation codes;
- e) Application for any other land use regulatory permits which may be required by ordinance

The Examiner shall receive and examine available information, conduct public hearings, prepare a record thereof and enter findings of fact and conclusions based upon those facts, together with a recommendation to the City Council, for the following applications:

- a) Rezones
- b) Preliminary Plats
- c) Planned Unit Developments
- d) Site plans
- e) Shoreline Permits

The Examiner shall also conduct public hearings when required under the provisions of the State Environmental Policy Act; conduct public hearings relative to possible revocation of any conditional use permit; conduct such other hearings as the Council may from time to time deem appropriate.

2. Recommendation or Decision.

- a) The Examiner's recommendation or decision may be to grant or deny the application, or the Examiner may recommend or require of the applicant such conditions, modifications and restrictions as the Examiner finds necessary to make the application compatible with its environment and carry out the objectives and goals of the Comprehensive Plan, the Zoning Code; the subdivision code, and other codes and ordinances of the City of Gig Harbor. Conditions, modifications and restrictions which may be imposed are, but are not limited to additional setbacks, screenings in the form of landscaping and fencing, covenants, public works type improvements, easements and dedications of additional road rights-of-ways; performance bonds may be required to insure compliance with conditions, modifications and restrictions.
- b) In regard to applications for rezone, preliminary plat approval, and P.U.D.'s the Examiner's findings and conclusions shall be submitted to the City Council, which shall have the final authority to act on such applications. The hearing by the Examiner shall constitute the hearing by the City Council.

Section 11. APPLICATIONS. Applications for all matters to be heard by the Examiner shall be presented to the Department of Community Development. When it is found an application meets the filing requirements of the Department of Community Development it shall be accepted. The department shall be responsible for assigning a date of public hearing for each application which date shall not be more than 45 days after the applicant has complied with all requirements and furnished all necessary data to the Department of Community Development.

Section 12. REPORT BY DEPARTMENT OF COMMUNITY DEVELOPMENT. When such application has been set for public hearing, the Department of Community Development shall coordinate and assemble the comments and recommendations of other City departments and governmental agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the Department of Community Development findings and supportive recommendations. At least seven (7) calendar days prior to the scheduled hearing, the report shall be filed with the Examiner and copies thereof shall be mailed to the applicant and shall be made available for use by an interested party for the cost of reproduction.

Section 13. PUBLIC HEARING. Before rendering a decision or recommendation on any application, the Examiner shall hold at least one public hearing thereon.

Notice of the time and place of the public hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given at least ten (10) days prior to such hearing.

The Examiner shall have the power to prescribe rules and regulations for the conduct of hearings under this Ordinance and also to administer oaths, and preserve order.

Section 14. EXAMINER'S DECISION AND RECOMMENDATION -- FINDINGS REQUIRED. When the Examiner renders a decision or recommendation, the Examiner shall make and enter written findings from the record and conclusions therefrom which support such decision, which decision shall be rendered on the tenth (10) day following the conclusion of the hearing. The copy of such decision including findings and conclusions shall be transmitted by certified mail, return receipt requested, to the applicant and other parties of record requesting the same.

In the case of applications requiring council approval the examiner shall file a decision with the City Council at the expiration of the period provided for a re-hearing or on the tenth (10) day following the conclusion of a re-hearing, if one is conducted.

Section 15. RECONSIDERATION. Any aggrieved person feeling that the decision of the Examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Examiner within ten (10) days of the date the decision is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the Examiner may, after review of the record, take further action as he or she deems proper.

Section 16. APPEAL OF EXAMINER'S DECISION. Any party who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Department of Community Development within fourteen (14) days from the date the final decision of the Examiner is rendered, requesting a review of such decision.

Such appeal shall be upon the record, established and made at the hearing held by the Examiner. Whenever a decision of the Examiner is reviewed by the City Council pursuant to this section, other parties of record may submit written memoranda in support of their positions. In addition, the Council shall allow each side no more than fifteen minutes of oral presentation. However, no new evidence or testimony shall be presented to the Council during such oral presentation. The City Council shall accept, modify or reject any findings or conclusions, or remand the decisions of the Examiner for further hearing; provided that any decision of the City Council shall be based on the record of the hearing conducted by the Examiner; however, the Council may publicly request additional information of the appellant and the Examiner at its discretion.

Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a review shall be held by the City Council. Such review shall be held in accordance with appeal procedures adopted by the City Council by resolution. If the Examiner has recommended approval of the proposal, such recommendation shall be considered by the City Council at the same time as the consideration of the appeal.

Further action by the examiner shall be within 30 days of the reconsideration request.

Section 17. COUNCIL ACTION. Any application requiring action by the City Council shall be taken by the adoption of a resolution or ordinance by the Council. When taking any such final action, the Council shall make and enter findings of fact from the record and conclusions therefrom which support is action. The City Council may adopt all or portions of the Examiner's findings and conclusions.

In the case of an ordinance for rezone of property, the ordinance shall not be placed on the Council's agenda until all conditions, restrictions, or modifications which may have been stipulated by the Council have been accomplished or provisions for compliance made to the satisfaction of the Council.

The action of the Council, approving, modifying, or rejecting a decision of the Examiner, shall be final and conclusive, unless within twenty (20) days from the date of the Council action an aggrieved party or person applies for a writ of certiorari to the Superior Court of Washington for Pierce County, for the purpose of review of the action taken.

Section 18. SEVERABILITY. The provisions of this Ordinance are hereby declared to be severable. If any word, phrase, clause, sentence, paragraph, section, or part in or of this Ordinance, or the application thereof to any person or circumstance, is declared invalid, the remaining provisions and the application of such provisions to other persons or circumstances shall not be affected thereby, but shall remain in full force and effect, the Mayor and City Council hereby declaring that they would have ordained the remaining provisions of this Ordinance without the word, phrase, clause, sentence, paragraph, section, or part, or the application thereof, so held invalid.

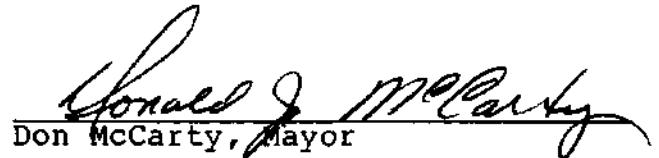
Section 19. COMPUTATION OF TIME. Computation of any period of time prescribed or allowed by these rules shall begin with the first day following that on which the act or event initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national or state holiday, the period shall run until the end of the next following business day.

Section 20. REPEALING CONFLICTING ORDINANCES. Any and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

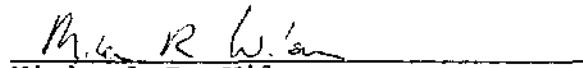
Section 21. This Ordinance shall take effect and be in full force five (5) days from and after its passage, approval and publication as provided by law.

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**PASSED** at a regular meeting of the City Council held on the  
11th day of August, 1986.

  
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Don McCarty, Mayor

**ATTEST:**

  
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Michael R. Wilson  
City Administrator

Filed with the city clerk: 6/17/86  
Passed by the city council: 8/11/86  
Date Published: 8/27/86  
Date effective: 9/2/86