

CITY OF GIG HARBOR
ORDINANCE NO. 619

AN ORDINANCE AMENDING TITLE 18 OF THE GIG HARBOR MUNICIPAL CODE ADOPTING A NEW CHAPTER 18.12 FOR THE INTERIM MANAGEMENT AND REGULATION OF CRITICAL AREAS WITHIN THE CITY OF GIG HARBOR AND WHICH FURTHER IMPLEMENTS THE REQUIREMENTS UNDER THE GROWTH MANAGEMENT ACT, CHAPTER 36.70A, FOR THE PROTECTION OF CRITICAL AREAS.

WHEREAS, the City Planning Commission has conducted nine public meetings and a public hearing on a proposed ordinance which provides standards for development in environmentally sensitive areas; and,

WHEREAS, following its public hearings, the Planning Commission recommended approval of the ordinance to the City Council; and,

WHEREAS, this ordinance is intended to promote the maintenance, enhancement and preservation of critical areas and environmentally sensitive natural systems; and,

WHEREAS, the Planning Commission has transmitted to the City Council a letter of its findings for the adoption of the interim critical areas ordinance; and,

WHEREAS, the Interim Critical Areas Ordinance (New Title 18.12) implements the policies of the State Department of Community Development and SEPA, and the City of Gig Harbor Comprehensive Plan and seeks to minimize potential hazards to the general public.

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, ORDAINS as follows:

Section 1 A new Chapter 18.12 is hereby adopted to read as follows:

CHAPTER 18.12

CITY OF GIG HARBOR
CRITICAL AREAS

Sections:

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18.12.010 Purpose

This ordinance is intended to promote the maintenance, enhancement and preservation of critical areas and environmentally sensitive natural systems by avoiding or minimizing adverse impacts from construction and development. This ordinance implements the goals and objectives of the State of Washington Growth Management Act of 1990 through the development and implementation of policies and interim regulations to manage critical areas in the public's interest and welfare. It is not the intent of this ordinance to deny a reasonable use of private property, but to assure that development on or near critical areas is accomplished in a manner that is sensitive to the environmental resources of the community.

18.12.020 Goals

In implementing the purposes stated above, it is the intent of this chapter to accomplish the following:

- A. Protect environmentally sensitive natural areas and the functions they perform by the careful and considerate regulation of development.
- B. Minimize damage to life, limb and property due to landslides and erosion on steep or unstable slopes, seismic hazard areas and areas subject to subsidence.
- C. Protect and maintain stream flows and water quality within the streams.
- D. Minimize or prevent siltation to the receiving waters of Gig Harbor Bay for the maintenance of marine water quality and the maintenance and preservation of marine fish and shellfish.
- E. Preserve natural forms of flood control and stormwater storage from alterations to drainage or stream flow patterns.
- F. Protect aquifer recharge areas from undesirable or harmful development.
- G. Protect, maintain and enhance areas suitable for wildlife, including rare, threatened or endangered species.
- H. Protect, maintain and enhance fish and wildlife habitat conservation areas within their natural geographic distribution so as to avoid the creation of subpopulations.
- I. Implement the goals, policies and requirements of the Growth Management Act.

18.12.030 Definitions

This chapter applies to all designated or defined critical areas within the City of Gig Harbor. The following definitions apply:

"Critical areas" consists of those lands which are subject to natural hazards, contain important or

significant natural resources or which have a high capability of supporting important natural resources.

"Aquifer" is a subsurface, saturated geologic formation which produces, or is capable of producing, a sufficient quantity of water to serve as a private or public water supply

"Aquifer Recharge areas" shall consist of those areas which serve as critical groundwater recharge areas and which are highly vulnerable to contamination from intensive land uses within these areas.

"Best management plan" is a plan or program developed by the local Soil Conservation District (U.S.D.A.) which specifies best management practices for the control of animal wastes, stormwater runoff and erosion.

"Bluff" is a steeply rising, near vertical slope which abuts and rises from the Puget Sound Shoreline. Bluffs occur in the east area of the City, fronting the Tacoma Narrows, and are further identified in the Coastal Zone Atlas, Volume 7, for Pierce County. The toe of the bluff is the beach and the top is typically a distinct line where the slope abruptly levels out. Where there is no distinct break in slope, the top is the line of vegetation separating the unvegetated slope from the vegetated uplands, or, if the bluff is vegetated, that point where the bluff slope diminishes to fifteen percent (15%) or less.

"Buffer" is a natural area adjacent to hillsides or ravines which provides a margin of safety through protection of slope stability, attenuation of surface water flows and landslide, seismic and erosion hazards reasonably necessary to minimize risk to the public from loss of life, well-being or property damage from natural disaster.

"Building Setback Line" is a distance, in feet, beyond which the footprint or foundation of a building or structure shall not extend.

"Contaminant" means any chemical, physical, biological or radiological material that is not naturally occurring and is introduced into the environment by human action, accident or negligence.

"DRASTIC" is a model developed by the National Water Well Association and Environmental Protection Agency and which is used to measure aquifer susceptibility to contamination.

"Erosion hazard areas" are those areas which are vulnerable to erosion due to natural characteristics including vegetative cover, soil texture, slope, gradient or which have been induced by human activity. Those areas which are rated severe or very severe for building site development on slopes or cut banks, in accordance with the United States Department of Agriculture Soil Conservation Service Soil Survey for Pierce County Area (Feb. 1979) are included within this definition.

"Flood Hazard Areas" shall consist of those areas within the City of Gig Harbor which are determined to be at risk of having a one percent or greater chance of experiencing a flood in any one year, with those areas defined and identified on the Federal Emergency Management Administration (FEMA) Flood Insurance Rate Maps for the City of Gig Harbor.

"Fish and Wildlife Habitat Areas" consists of those sites or areas identified which, in a natural state, serve as an important habitat for locally important species, including, but not limited to, riparian ecosystems; naturally occurring ponds under twenty acres; areas in which rare, threatened or endangered species have a primary association; commercial and recreational shellfish areas as identified by the State of Washington Department of Fisheries or the Coastal Zone Atlas for Pierce County; kelp and eelgrass beds as identified in the Coastal Zone Atlas for Pierce County or the Puget Sound Environmental Atlas.

"Geologically Hazardous Areas" shall consist of those areas as designated in the City of Gig Harbor Comprehensive Plan as "Landslide Hazards", in the Washington Department of Ecology Coastal Zone Atlas, Volume 7, and which are further defined in WAC 365-190-080(5) and this Title.

"Habitat management plan" means a report prepared by a qualified wildlife biologist.

"Hazardous substance" is any material that exhibits any of the characteristics or criteria of hazardous waste, inclusive of waste oil and petroleum products, and which further meets the definitions of "hazardous waste" pursuant to WAC 173-303.

"Hillsides" are geologic features with slopes of fifteen percent (15%) or greater. The ordinance provides four classes of hillsides in order to differentiate between the levels of protection and the application of development standards.

"Landslide" means an abrupt downslope movement of soil, rock or ground surface material.

"Landslide hazard area" means those areas which are susceptible to risk of mass movement due to a combination of geologic, topographic and hydrologic factors.

"Ravine Sidewall" is a steep slope which abuts and rises from the valley floor of a stream and which was created by the normal erosive action of the stream. Ravine sidewalls are characterized by slopes predominantly in excess of twenty five percent (25%), although portions may be less than twenty five percent (25%). The base of a ravine sidewall is the stream valley floor. The top of a ravine sidewall is a distinct line where the slope abruptly level out. Where there is no distinct break in slope, the top shall be that point where the slope diminishes to fifteen percent (15%), or less.

"Seismic hazard areas" are those areas which are susceptible to severe damage from earthquakes as a result of ground shaking, slope failure, settlement or soil liquefaction.

"Species of local importance" means a species of animal which are of local concern due to their population status or their sensitivity to habitat manipulation. This term also includes game species.

"Slope" is an inclined ground surface, the inclination of which is expressed as a ratio (percentage) of vertical distance to horizontal distance by the following formula:

$$\frac{V \text{ (Vertical Distance)}}{H \text{ (Horizontal Distance)}} \times 100 = \% \text{ Slope}$$

H (Horizontal Distance)

"Wildlife biologist" means a person having, at a minimum, a Bachelor's degree in wildlife biology, wildlife science, wildlife ecology, wildlife management or zoology, or a Bachelor's degree in natural resource or environmental science plus twelve semester or eighteen quarter hours on wildlife course works and two years of professional experience.

Section 18.12.040 Applicability

A. Critical Area Review. All development proposals in critical areas, whether on public or private property, shall comply with the requirements of this Chapter. The Planning Director or his/her designee shall utilize the procedures and rules established in the City of Gig Harbor Environmental Policy Ordinance, Chapter 18.04 (SEPA environmental review), to implement the provisions of this chapter. For the purpose of this chapter, development proposals include any development project which would require any of the following:

1. Building permit for any construction.
2. Clearing and grading permit.
3. Any shoreline management permit as authorized under Chapter 90.58 RCW.
4. Site plan review.
5. Subdivision, short subdivision or planned unit development.
6. Zoning variance or conditional use permit.

B. Special Studies Required. When an applicant submits an application for any development proposal, the application shall indicate whether any critical area is located on the site. The Planning Director or designee shall visit the site, and in conjunction with the review of the information provided by the applicant and any other suitable information, shall make a determination as to whether or not sufficient information is available to evaluate the proposal. If it is determined that the information presented is not sufficient to adequately evaluate a proposal, the Planning Director shall notify the applicant that additional studies as specified herein shall be provided.

C. Appeals. A decision of the Planning Director to approve, conditionally approve or deny a permit, or any official interpretation in the administration of this Chapter may be appealed to the Hearing Examiner. Such appeal shall be in writing and must be submitted to the City within ten (10) days of the administration's decision. Appeals shall be considered in accordance with the procedures established in Section 17.10 of the City Zoning Code.

18.12.050 Hillsides, Ravine Sidewalls and Bluffs

A. Disturbance Limitations. If a hillside, ravine sidewall or bluff is located on or adjacent to a development site, all activities on the site shall be in compliance with the following requirements:

1. Ravine Sidewalls and Bluffs

a. Buffers: A fifty foot (50'), undisturbed buffer of natural vegetation shall be established and maintained from the top, toe and sides of all ravine sidewalls and bluffs. All buffers shall be measured on a horizontal plane.

b. Buffer Delineation. The edge of a buffer shall be clearly staked, flagged and fenced prior to any site clearing or construction. Markers shall be clearly visible and weather resistant. Site clearing shall not commence until such time that the project proponent or authorized agent for the project proponent has submitted written notice to the City that the buffer requirements of this section have been met. Field marking of the buffer shall remain in place until all phases of construction have been complete and an occupancy permit has been issued by the City.

c. Buffer Reduction: A buffer may be reduced upon verification by a qualified professional and supporting environmental information, to the satisfaction of the City, that the proposed construction method will:

- 1) Not adversely impact the stability of

ravine sidewalls.

- 2) Does not increase erosion and mass movement potential of ravine sidewalls.
- 3) Use construction techniques which minimize disruption of existing topography and vegetation.
- 4) Includes measures to overcome any geological, soils and hydrologic constraints of the site.

The buffer may be reduced to no less than the minimum rear yard setback established in the respective zoning district, pursuant to Title 17 of the Gig Harbor Municipal Code.

- d. Building Setback Lines: A building setback line of ten feet (10'), is required from the edge of any buffer of a ravine sidewall or bluff.
2. Hillsides of Fifteen Percent Slope and Greater - Studies Required. Developments on hillsides shall comply with the following requirements:

- a. Site Analysis Reports Required: The following chart sets forth the level of site analysis report required to be developed based upon the range of the slope of the site and adjacent properties:

<u>Slope of Site and/or Adjacent Properties</u>	<u>Length of Slope(Feet)</u>	<u>Parameters of Report (See Key)</u>	<u>Report Prepared by:</u>
0-15%	No Limit	Report Not Required	
15-25%	> 50	1, 2, 3	Building Contractor or other technical consultant
25-40%	>35	1, 2, 3, 4	Registered Civil Engineer

40% +	>20	1, 2, 3, 4	Registered Civil Engineer or Geo-Technical Engineer
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Report Key Contents

1. Recommended maximum site ground disturbance.
2. Estimate of storm drainage (GPM) for pre-construction, during construction and post construction.
3. Recommended methods to minimize erosion and storm water runoff from site during construction and post construction.
4. Seismic stability of site, pre-construction, during construction and post construction.

b. Development Location:

- i. Structures and improvements shall be located to preserve the most sensitive portion of the site, it's natural land forms and vegetation.

c. Landscaping: The disturbed areas of a development site not used for buildings and other developments shall be landscaped according to the landscape standards of the zoning code, Section 17.78.

d. Project construction shall be required to implement all recommended requirements of the report referenced in subsection 2.a., above, and any additional requirements as determined by City staff. In addition, should adjacent properties be adversely impacted by the implementation or construction, additional mitigation measures necessary to minimize or

eliminate these impacts shall be implemented by the applicant.

18.12.060 Landslide and Erosion Hazard Areas. Areas which are identified as landslide or erosion hazard areas shall be subject to the requirements established in this section.

A. Regulation. Applications for regulated activities proposed within designated landslide and erosion hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a Civil Engineer with the State of Washington. If it is satisfactorily demonstrated to the Planning Director that a landslide or erosion hazard potential does not exist on the site, the requirements of this section may be waived.

B. Geotechnical Report Requirements. A geotechnical report required under this section shall include, at a minimum, the following information:

1. Topographic data at a minimum scale of 1:240 (1 inch = 20 feet). Slope ranges shall be clearly delineated in increments of 15-25 percent, 25-40 percent and greater than 40 percent.
2. Subsurface data, including boring logs and exploratory methods, soil and rock statigraphy, groundwater levels and any seasonal variations of groundwater levels.
3. Site history, including description of prior grading and clearing, soil instability or slope failure.

If a geotechnical report has been prepared and accepted by the Planning Director within the previous two years for a specific site and the proposed land-use development and site conditions have not changed, the report may be utilized without the requirement for a new report.

C. Development Standards. Upon submission of a satisfactory geotechnical report or assessment, site development may be authorized by the Director subject to the following:

- 1) Buffers shall comply with the requirements of Section 18.12.050 (A).

- 2) Approved erosion control measures are in place prior to, or simultaneous, with site clearing or excavation.
- 3) Such other conditions as deemed appropriate by the administrator to ensure compliance with the provisions of this chapter.

18.12.070 Seismic Hazard Areas. Designated seismic hazard areas shall be subject to the requirements of this section. At a minimum, seismic hazard areas shall include areas of alluvial and recessional outwash surficial geologic units as identified in Water Resources and Geology of the Kitsap Peninsula and Certain Adjacent Lands, Water Supply Bulletin Number 18, Plate One, U.S. Department of the Interior, Geological Survey, Water Resources Division and any lot, tract, site or parcel which has been modified by imported or excavated earthen fill material.

- A. Regulation. Applications for regulated activities proposed within designated seismic hazard areas shall be accompanied by a geotechnical report prepared by a geologist or geotechnical engineer licensed as a Civil Engineer with the State of Washington. If it is satisfactorily demonstrated that a seismic hazard potential does not exist on the site, the requirements of this section may be waived.
- B. Geotechnical Report Requirements. The required report shall evaluate the existing site conditions, including geologic, hydrologic and site capability to accommodate the proposed activity. At a minimum, the following shall be included:
 - 1) Analysis of subsurface conditions.
 - 2) Delineation of the site subject to seismic hazards.
 - 3) Analysis of mitigation measures which may be employed to reduce or eliminate seismic risks, including an evaluation of the effectiveness of mitigation measures.

If a proposal is required to submit a seismic risk analysis pursuant to any requirements of the most recently adopted edition of the Uniform Building Code (Chapters 23 or 25) by

the City of Gig Harbor, the report requirements of this section may be waived by the Department.

18.12.080 Flood Hazard Areas. Areas which are prone to flooding and which are identified in the Federal Emergency Management Administration Flood Insurance Rate Maps for the City of Gig Harbor (September 2, 1981) shall be subject to the requirements of this section.

A. **Regulation.** All development within flood hazard areas shall be subject to the requirements of the City of Gig Harbor Flood Hazard Construction Standards, Title 15.04 of the Gig Harbor Municipal Code.

18.12.090 Critical Fish and Wildlife Habitat Areas.

Critical Fish and wildlife habitat areas are those areas identified as being of critical importance in the maintenance and preservation of fish, wildlife and natural vegetation. Areas which are identified or classified as fish and wildlife habitat areas subject to this section shall be subject to the requirements of this section.

A. **General.** Critical Fish and wildlife habitat areas are identified as follows:

1. Areas with which federal or state endangered, threatened and sensitive species of fish, wildlife and plants have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
2. Habitats and species of local importance, including:
 - a) Areas with state listed monitor or candidate species or federally listed candidate species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
 - b) Special habitat areas which are infrequent in occurrence in the City of Gig Harbor and which provide specific habitats as follows:

- (1) Old growth forests
- (2) Snag-rich areas
- (3) Category 2 wetland areas
- (4) Significant stands of trees which provide roosting areas for endangered, threatened, rare or species of concern as identified by the Washington Department of Wildlife.

- 3. Commercial and public recreational shellfish areas
- 4. Kelp and eelgrass beds
- 5. Herring and smelt spawning areas
- 6. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat
- 7. Lakes, ponds and streams planted with fish by a governmental agency, an agency sponsored group or tribal entity.
- 8. State natural area preserves and natural resource conservation areas.
- 9. Crescent and Donkey (North) Creeks, including those lands within thirty-five (35) feet of the ordinary high-water mark of the stream.

B. Classification. Critical Fish and wildlife habitat areas are identified in the following documents:

- 1. Puget Sound Environmental Atlas (Puget Sound Water Quality Authority)
- 2. Coastal Zone Atlas of Washington, Volume IV, Pierce County (Washington Department of Ecology)
- 3. Commercial and Recreational Shellfish Areas in Puget Sound (Washington Department of Health)
- 4. The Department of Natural Resources stream typing maps and Natural Heritage Data Base
- 5. The Washington Department of Wildlife Priority Habitats and Species Program, the Non-Game Data

Base, and the Washington Rivers Information System

C. Regulation

1. Habitat Assessment. For all regulated activity proposed on a site which contains or is within 300 feet of critical fish and wildlife habitat, a habitat assessment shall be prepared by a professional wildlife biologist with a minimum of a bachelor's degree in wildlife biology or an equivalent curriculum. The habitat assessment shall include, at a minimum, the following:
 - a) An analysis and discussion of species or habitats known or suspected to be located within 300 feet of the site.
 - b) A site plan which clearly delineates the critical fish and wildlife habitats found on or within 300 feet of the site.
2. Habitat Assessment Review. A habitat assessment shall be forwarded for review and comment to agencies with expertise or jurisdiction on the proposal, including, but not limited to:
 - a) Washington Department of Wildlife
 - b) Washington Department of Fisheries
 - c) Washington Department of Natural Resources
 - d) United States Fish and Wildlife ServiceComments received by the requested review agencies within forty-five days of the submittal of the assessment shall be considered by the Department. If it is determined, based upon the comments received, that critical fish and wildlife habitat does not occur on or within 300 feet of the site, the development may proceed without any additional requirements under this section. If it is determined that a critical fish and wildlife habitat is on or within 300 feet of the site, a habitat management plan shall be prepared.
3. Habitat Management Plan. Habitat management plans required under this section shall be prepared by a professional wildlife biologist with a bachelor degree in wildlife biology or an equivalent curricula. A habitat management plan shall

contain, at a minimum, the following:

- a) Analysis and discussion on the project's effects on critical fish and wildlife habitat;
- b) An assessment and discussion on special management recommendations which have been developed for species or habitat located on the site by any federal or state agency;
- c) Proposed mitigation measures which could minimize or avoid impacts;
- d) Assessment and evaluation of the effectiveness of mitigation measures proposed;
- e) Assessment and evaluation of on-going management practices which will protect critical fish and wildlife habitat after development of the project site, including proposed monitoring and maintenance programs.
- f) Assessment of project impact or effect on water quality in Crescent or Donkey (North) Creeks, and any proposed methods or practices to avoid degradation of water quality.

Upon a review of the habitat management plan by appropriate federal and state agencies, comments received by the agencies within forty-five days (45) of the submittal of the proposed plan shall be considered by the City and, if mitigation is recommended, may be incorporated into conditions of project approval, as appropriate. If it is determined, based upon the comments received, that a project or proposal will result in the extirpation or isolation of a critical fish or wildlife species, including critical plant communities, the project or proposal may be denied.

D. Buffer Requirements. If it is determined, based upon a review of the comments received on the habitat management plan, that a buffer would serve to mitigate impacts to a critical fish or wildlife habitat, an undisturbed buffer shall be required on the development site. The width of the buffer shall be based upon a recommendation of at least one of the appropriate

review agencies but, in no case, shall exceed 150 feet, nor be less than 25 feet.

E. Buffer Reduction. A buffer required under this section may be reduced or eliminated if the local Conservation District has approved a best management plan (BMP) for the site which would provide protection to a critical fish or wildlife habitat.

18.12.100 Aquifer Recharge Areas. Aquifer recharge areas are particularly susceptible to contamination and degradation from land use activities. Areas which have a high potential for groundwater resource degradation are identified as aquifer recharge areas under this section and shall be subject to the requirements herein.

A. Designation/Classification. For the purposes of this section, the boundaries of any aquifer recharge areas within the City shall consist of the two highest DRASTIC zones which are rated 180 and above on the DRASTIC index range. Any site located within these boundaries is included in the aquifer recharge area.

B. Regulation.

1. Hydrogeologic Assessment Required. The following land uses shall require a hydrogeologic assessment of the proposed site if the site is located within an aquifer recharge area:

- (a) Hazardous Substance Processing and Handling
- (b) Hazardous Waste Treatment and Storage Facility
- (c) Waste-water treatment plant sludge disposal categorized as S-3, S-4 and S-5
- (d) Solid Waste Disposal Facility

2. Hydrogeologic Assessment Minimum Requirements. A hydrogeologic assessment shall be submitted by a firm, agent or individual with experience in geohydrologic assessments and shall contain, at a minimum, and consider the following parameters:

- (a) Documentable Information Sources
- (b) Geologic data pertinent to well logs or borings used to identify information.
- (c) Ambient groundwater quality
- (d) Groundwater elevation
- (e) Depth to perched water table, including mapped location
- (f) Recharge potential of facility site, respective to permeability and transmissivity
- (g) Groundwater flow vector and gradient
- (h) Currently available data on wells and any springs located within 1,000 feet of the facility site
- (i) Surface water location and recharge potential
- (j) Water supply source for the facility
- (k) Analysis and discussion of the affects of the proposed project on the groundwater resource
- (l) Proposed sampling schedules
- (m) Any additional information that may be required or requested by the Pierce County Environmental Health Department.

3. Review of Geohydrologic Assessment. A geohydrologic assessment prepared under this section shall be submitted to the Pierce County Department of Environmental Health for review and comment. Comments received by the Department of Health within sixty (60) days of submittal of the assessment shall be considered by the City in the approval, conditional approval or denial of a project.

4. Findings for Consideration of Approval. A hydrogeologic assessment must clearly demonstrate that the proposed use does not present a threat of contamination to the aquifer system, or provides a

conclusive demonstration that application of new or improved technology will result in no greater threat to the groundwater resource than the current undeveloped condition of the site. Successful demonstration of these findings warrants approval under this section.

18.12.110 Reasonable Use Exceptions. If the application of this chapter would preclude all reasonable use of a site, development may be permitted, consistent with the general purposes and intent of this chapter.

A. Information Required. An application for a reasonable use exception shall be in writing to the Department Director and shall include the following information:

- (1) A description of the area of the site which is within a critical resource area or within the setbacks or buffers as required under this title.
- (2) The area of the site which is regulated under the respective setbacks (minimum yards) and maximum impervious coverage of the zoning code, Title 17 of the Gig Harbor Municipal Code.
- (3) An analysis of the impact that the amount of development proposed would have on the critical area as defined under this Title.
- (4) An analysis of whether any other reasonable use with less impact on the critical area and buffer area, as required, is possible.
- (5) A design of the project as proposed as a reasonable use so that the development will have the least practicable impact on the critical area.
- (6) A description and analysis of the modification requested of the minimum requirements of this title to accommodate the proposed development.
- (7) Such other information as may be required by the Department which is reasonable and necessary to evaluate the reasonable use respective to the proposed development.

B. Findings for Approval of Reasonable Use Exception. If an applicant successfully demonstrates that the

requirements of this title would deny all reasonable use of a site, development may be permitted. The Department Director shall make written findings as follows:

- (1) There is no feasible alternative to the proposed development which has less impact on the critical area;
- (2) The proposed development does not present a threat to the public health, safety or welfare;
- (3) Any modification of the requirements of this Title shall be the minimum necessary to allow for the reasonable use of the property;
- (4) The inability of the applicant to derive a reasonable use of the property is not the result of actions by the applicant which resulted in the creation of the undevelopable condition after the effective date of this Title;
- (5) The proposal mitigates the impacts to the critical area to the maximum extent practicable, while maintaining the reasonable use of the site.
- (6) That all other provisions of this chapter apply excepting that which is the minimum necessary to allow for the reasonable use of the site or property.

The Director may impose any reasonable conditions on the granting of the reasonable use exception, consistent with the minimum requirements of this chapter.

C. Notification of Decision. A decision by the Director under this section shall be provided, in writing, to the applicant and all property owners adjacent to or abutting the site. The applicant shall be responsible for providing a current listing of all adjacent property owners along with application for a reasonable use exception.

D. Appeal of Director's Decision. The decision of the Director is appealable to the City Hearing Examiner in accordance with the provisions of Section 17.10. An appeal shall be in writing and submitted within ten

(10) days of the date of decision.

E. Limits of Applying Reasonable Use Exception. A reasonable use exception shall only be considered in those situations where a reasonable use would be prohibited under this Title. An applicant who seeks an exception from the minimum requirements of this title shall request a variance under the provisions of this title.

F. Time Limitation. A reasonable use exception shall be valid for a period of two (2) years, unless an extension is granted by the department at least thirty (30) days prior to the expiration date. Any extension granted shall be on a one-time bases and shall be valid for a period not to exceed one (1) year. The time limit is void if the applicant fails to procure the necessary development permit within the time allotted. The Department may grant a time extension if:

1. Unforeseen circumstances or conditions necessitate the extension of the development exception; and
2. Termination of the development exception would result in unreasonable hardship to the applicant, and the applicant is not responsible for the delay; and
3. The extension of the development exception will not cause adverse impacts to environmentally sensitive areas.

18.12.120 Maintenance of Existing Structures and Developments. Structures and developments lawfully existing prior to the adoption of this section shall be allowed to be maintained and repaired without any additional review procedures under this title, provided that the maintenance or repair activity itself remains consistent with the provisions of this ordinance and does not increase its nonconformity of such structures or development. Additionally, such construction activity shall not prove harmful to adjacent properties. Maintenance consists of usual actions necessary to prevent a decline, lapse or cessation from a lawfully established condition. Repair consists of the restoration of a development comparable to its original condition within two years of sustaining damage or partial destruction. Maintenance and repair shall include damage incurred as a result of accident, fire or the

elements. Total replacement of a structure or development which is not common practice does not constitute repair. In addition to the requirements of this section, the requirements of section 17.68 (Nonconformities) shall apply.

18.12.130 Exemptions from Development Standards. Certain activities and uses may be of such impact and character or of such dependency to the maintenance and welfare a lawfully permitted use that the requirements of this Title shall not apply and may be waived at the discretion of the Department. Notwithstanding the requirements of Title 17, the following uses and activities are exempt from the requirements of this section:

- A. Minimum actions necessary to protect life or property in an emergency situation. Qualification as an emergency shall be based upon the factual occurrence of imminent threat or danger.
- B. Public and private pedestrian trails which consist of a pervious surface not exceeding four feet in width.
- C. Science research and educational facilities, including archaeological sites and attendant excavation, which do not require the construction of permanent structures or roads for vehicle access.
- D. Subsurface drilling for geological exploration associated with a proposed development which is not exempt from the requirements of this Title.
- E. The placement of signs consistent with Section 17.80.

18.12.140 Variances from the Minimum Requirements.

- A. Variance applications shall be considered by the city according to variance procedures described in Section 17.66 of the City of Gig Harbor Zoning Code, except that required showings for a variance shall be according to this Section (18.12.140).
- B. The Examiner shall have the authority to grant a variance from the provisions of this Chapter, including variance for buffer widths, when, in the opinion of the Examiner, the conditions as set

forth below have been found to exist. In such cases a variance may be granted which is in harmony with the general purpose and intent of this chapter.

1. Required showings for a variance: Before any variance may be granted, it shall be shown:
 - a. That there are special circumstances applicable to the subject property or to the intended use such as shape, topography, location, or surroundings that do not apply generally to other properties and which support the granting of a variance from the minimum requirements; and
 - b. That such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property but which, because of this ordinance, is denied to the property in question; and
 - c. That the granting of such variance will not be materially detrimental to the public welfare; and
2. Required showings for buffer area variance. Before any buffer area variance may be granted, it shall be shown:
 - a. Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other similarly situated property, but which because of this regulation is denied to the property in question; and
 - b. The granting of the buffer width variance will not adversely affect the subject site.
3. When granting a variance, the Examiner shall determine that the circumstances do exist as required by this Section, and attach specific

conditions to the variance which will serve to accomplish the standards, criteria, and policies established by this Chapter.

4. To apply for a variance, the applicant shall submit to the city a complete variance application. Such application shall include a site plan, pertinent information, a cover letter addressing the required showings for a variance, and required fees.

18.12.150 Performance Assurance.

- A. The Planning Director may allow the applicant to provide a performance assurance device in lieu of constructing required mitigation measures and may require a performance assurance device to guarantee installation/construction of required mitigation measures within one year of the issuance of a certificate of occupancy or final inspection
- B. Performance assurance devices shall take the form of one of the following:
 1. A surety bond executed by a surety company authorized to transact business in the state in a form approved by the city attorney;
 2. Cash;
 3. A letter of credit approved by the city attorney from a financial institution stating that the money is held for the purpose of development of the landscaping;
 4. Assigned savings pursuant to an agreement approved by the city attorney.
- C. If a performance assurance device is employed, the property owner shall provide the city with a nonrevocable notarized agreement granting the city and its agents the right to enter the property and perform any required work remaining undone at the expiration of the assurance device.
- D. If the developer/property owner fails to carry out provisions of the agreement and the city has

incurred costs or expenses resulting from such failure, the city shall call on the bond or cash deposit reimbursement. If the amount of the bond or case deposit is less than the cost and expense incurred by the city, the developer shall be liable to the city for the difference. If the amount of the bond or cash deposit exceeds the cost and expense incurred by the city, the remainder shall be released.

18.12.160 Penalties and Enforcement.

- A. The Planning Director shall have authority to enforce this Chapter, any rule or regulation adopted, and any permit, order or approval issued pursuant to this Chapter, against any violation or threatened violation thereof. The Planning Director is authorized to issue violation notices and administrative orders, levy fines, and/or institute legal actions in court. Recourse to any single remedy shall not preclude recourse to any of the other remedies. Each violation of this Chapter, or any rule or regulation adopted, or any permit, permit condition, approval or order issued pursuant to this Chapter, shall be a separate offense, and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense. All costs, fees, and expenses in connection with enforcement actions may be recovered as damages against the violator.
- B. Any person who undertakes any activity within a designated critical area or within a required buffer without first obtaining an approval required by this Chapter, except as specifically exempted, or any person who violates one or more conditions of any approval required by this Chapter or of any cease and desist order issued pursuant to this Chapter shall incur a civil penalty assessed per violation. In the case of a continuing violation, each permit violation and each day of activity without a required approval shall be a separate and distinct violation. The civil penalty shall be assessed at a rate of fifty dollars (\$50) per day per violation. The penalty provided shall be appealable to the City of Gig Harbor Hearing Examiner in accordance with the

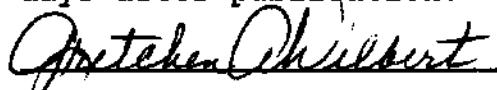
procedures established pursuant to Section 15.06 of the Gig Harbor Municipal Code.

18.12.170 Severability. If any section, sentence, clause or phrase of this ordinance, or the statutes adopted herein by reference, 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.

18.12.180 Chapter and Ordinance Updates. This Chapter and its related ordinance shall be reviewed by the City of Gig Harbor within two years of the effective date of this Chapter. The purpose of reviewing is to determine what amendments are appropriate to be made, and to establish a schedule for effecting those amendments.

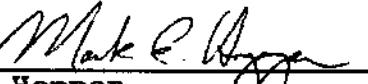
Section 2 If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3 This ordinance shall take effect and be in full force five (5) days after publication.



Gretchen A. Wilbert,
Mayor

ATTEST:


Mark E. Hoppen
City Administrator/Clerk

Filed with City Clerk: 1/24/92
Passed by City Council: 2/24/92
Date published: 3/4/92
Effective date: 3/9/92