

ORDINANCE 1522

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING ZONING CONTROLS PERTAINING TO SITE SPECIFIC REZONES AND HEIGHT RESTRICTION AREA VARIANCES, AMENDING CHAPTERS 17.62, 17.100, 19.01 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Chapter 17.62 of the Gig Harbor Municipal Code (GHMC) describes the city's height restriction area (HRA), related standards, and sets forth the procedure for processing an application to amend the HRA; and

WHEREAS, upon careful review of Chapter 17.62 GHMC city staff has found an ambiguity in how the HRA map is adopted and how amendments to the map are processed; and

WHEREAS, current code adopts the HRA as an overlay on the city's HRA map and amendments thereto are processed as a Type III permit application, which provides the city's hearing examiner with the authority to make the final decision and, if approved, results in removal of the subject site from the HRA map; and

WHEREAS, upon review of the historical legislative record relative to Chapter 17.62 GHMC, city staff found that the HRA map was originally adopted as a zoning overlay on the city's zoning map; and

WHEREAS, a proposal to remove a site from an adopted zoning overlay should be considered a site-specific rezone, while a proposal to vary from the standards of the city's development regulations, unless otherwise specified, is typically processed as a variance in accordance with the provisions of Chapter 17.66 GHMC; and

WHEREAS, Chapter 19.01 GHMC sets forth the procedures for processing the city's defined permit application types; and

WHEREAS, site-specific rezones are currently categorized as a Type III permit application whereby the city's hearing examiner holds a public hearing and makes the final decision; and

WHEREAS, site-specific rezones are considered a quasi-judicial decision which is the purview of city council; and

WHEREAS, quasi-judicial decisions are considered a Type IV permit application whereby the city council conducts a public hearing and makes the final decision; and

WHEREAS, due to potential impacts on local character a site-specific rezone could present, it would be proper for the city council to cede the hearing and receive a recommendation from the city's planning commission relative to a specific proposal; and

WHEREAS, the city's planning commission reviewed the interim controls set forth in Ordinance 1516 at public meetings on November 16, 2023, and December 21, 2023; and

WHEREAS, the city's planning commission held a public hearing on January 18, 2024; and

WHEREAS, the planning commission received written testimony from two individuals and heard testimony from an additional two individuals at the public hearing; and

WHEREAS, the planning commission made a motion to recommend approval of the draft ordinance as presented by staff and provided a recommendation to the city council dated January 19, 2024;

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

Section 1. The recitals set forth herein are hereby adopted as findings of fact.

Section 2. Section 17.62.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.62.020 Map adoptedHeight restriction area map. The standards of this chapter shall be imposed as an overlay zone shown on the city's official ~~height restriction area zoning~~ map, which depicts the property subject to the height restrictions. ~~The boundary for the height restriction area overlay shall be that which was published on the city's former height restriction area map last updated on October 4, 2016.~~¹ ~~The process for amending the city's zoning map is set forth in Chapter 17.100 GHMC.~~ The standards of this chapter are supplementary to the regulations contained in the underlying zones.

Section 3. Section 17.62.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.62.040 Amendment to height restriction area map Height restriction area variance. Amendments to the height restriction area map are a ~~Type III permit procedure. The procedures established under Chapter 17.100 GHMC and GHMC Title 19 for the consideration of amendments to the zoning district map shall be followed for amendments to the height restriction area map. The criteria for approval shall be as follows: Variances from the standards of this section shall be project specific and~~

¹ City Ordinance Number 1342

subject to the complete application requirements, permit application procedures, required findings and duration of approval requirements set forth in Chapter 17.66 GHMC for general variances. In addition, the hearing examiner shall make findings of fact setting forth and demonstrating that the following circumstances exist:

- A. That the~~The~~ request to amend the height restriction area map furthers the goals, policies and objectives of the comprehensive plan;
- B. The property or area proposed for exclusion from the height restriction area map site does not currently possess a view of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows;
- C. The gradient of the land within 100 feet of the property or area does not have a slope of five percent or greater toward Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows;
- D. That views~~Views~~ from adjacent properties will not be adversely affected.

Section 4. Section 17.100.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.100.010 Authority to amend. Whenever the public health, safety, general welfare, modifications to the comprehensive plan or good zoning practice requires, the city council may amend, supplement, modify, repeal or otherwise change these regulations and the boundaries of the districts in conformity with the comprehensive plan. ~~Site specific rezones are a Type III permit application and area wide rezones are a Type V permit application and shall be processed in accordance with Chapter 19.02 GHMC.~~

Section 5. Section 17.100.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.100.020 Manner of initiation. Changes in this title may be initiated in the following manner:

- A. **Source.**
 - 1. The city council upon its own motion may initiate changes in this title.
 - 2. The planning commission upon its own motion may initiate~~recommend to city council~~ changes in this title.
 - 3. Any individual, corporation or agency other than those listed above may initiate changes in this title. Amendments are processed as a Type IV permit procedure set forth in Chapter 19.01 GHMC and subject to the following:
 - a. For an area-wide zoning map amendment, the initiating individual, corporation or agency must be the owners or owner of a majority of the land in the petition area; and
 - b. For a site-specific zoning map amendment, the initiating individual, corporation or agency must be the property owner or authorized agent of the property owner; and
 - b.c. For an amendment to the text of this title, the initiating individual, corporation or agency must be an owner of real property within the city.

B. *Form.* An application for a change in the boundary of a district or the text of this title shall be filed with the planning department and shall be accompanied by such data and information as are necessary to assure the fullest practicable presentation of the facts. It shall set forth reasons and justification for proposing a change.

C. *Minimum Area.* Except for the extension of existing district boundaries and amendments to zoning overlays, no change in any use district, classification or official zoning map shall be considered if it contains fewer than two acres, excluding public streets or alley rights-of-way.

D. *Submittal Consideration.* The city council shall not consider any proposed amendment to the zoning map that is substantially the same as any other proposed amendment submitted within the previous 12 months which was disapproved. (Ord. 710 § 97, 1996; Ord. 573 § 2, 1990).

E. Fees. Applications submitted by private individuals or groups, or private entities are subject to application and processing fees as set forth in the city's adopted fee schedule.

Section 6. Section 17.100.025 of the Gig Harbor Municipal Code is hereby repealed.

Section 7. Section 17.100.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.100.030 Public hearing and notification. Public hearings and notifications related thereto shall be accomplished in accordance with the procedures and requirements established pursuant to Chapter 19.05 GHMC. ~~The planning commission's action shall be a recommendation to the city council.~~

Section 8. Section 17.100.035 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.100.035 General criteria for zoning district map amendment. Applications for amendments to the zoning district map (which include, but are not limited to, site specific rezones) may only be approved if all of the following criteria are satisfied:

- A. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan and Chapter 17.12.015 GHMC;
- B. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for the amendment; and
- D. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map.

Section 9. A new section is hereby added to Chapter 17.100 to read as follows:

17.100.040 General criteria for zoning text amendment. The city council's approval, modification, deferral, or denial of an amendment application must be based on the following criteria:

- A. The proposed amendment is consistent with the goals, objectives, and policies for the comprehensive plan; and
- B. The proposed amendment is consistent with the intent and purpose of the subject chapter or this title, generally.

Section 10. Section 19.01.003 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.01.003 Project permit application framework.

A. Action Type.

	PROCEDURE FOR PROJECT PERMIT APPLICATIONS (TYPE I – IV)					LEGISLATIVE
	TYPE I	TYPE II	TYPE III	TYPE III-A	TYPE IV	
Recommendation made by:	N/A	N/A	N/A	N/A	N/A; Planning commission for site specific rezones	Planning commission
Final decision made by:	Director	Director	Hearing examiner	Hearing examiner	City council	City council
Notice of application:	No	Yes	Yes	Yes	Yes	No
Open record public hearing or open record appeal of a final decision:	No	Only if appealed, open record hearing before hearing examiner	Yes, before hearing examiner to render final decision	Yes, before hearing examiner to render final decision	No	Yes, before planning commission which makes recommendation to council
Closed record appeal/final decision:	No	No	No, only if site-specific rezone appealed,	No	Yes, before council to render final decision	Yes, or council could hold its own hearing

			then before council			
Judicial appeal:	Yes	Yes	Yes	Yes	Yes	Yes

B. Decisions.

TYPE I	TYPE II	TYPE III	TYPE III-A	TYPE IV	TYPE V
Final short plat	Preliminary short plat	Plat vacations and alterations	Preliminary plats/major preliminary plat revisions	Final plats	Comprehensive plan amendments
Minor site plan review	Major site plan review	Conditional use permit	Preliminary PRD/PUD	Final PRD/PUD	Development regulation amendments
Minor amendments to PUD/PRD	Alternative design review ¹	General variances, sign permit variances, <u>height restriction area variance</u>	Major amendment to PRD	<u>Site-specific rezone²</u>	Zoning text amendments; area-wide zoning map amendments
Special use permits	Binding site plan	Shoreline substantial development, shoreline variance, shoreline conditional use			Annexations
Temporary trailers	Revisions to shoreline management permits ²	Major amendments to PUD			
Sign permits	Administrative variances	<u>Amendment to height restriction area map</u>			
Administrative design review ¹	Administrative interpretations	Mobile/manufactured home park or subdivision			

³ A site-specific rezone may have only one public hearing to be conducted by the city's planning commission.

Land clearing	Shoreline permit exemptions ²	Performance-based height exception			
Home occupation permit	Short-term rental permit	Changes from one nonconforming use to another			
Alternative landscape plan		Site-specific rezone			
Nonconforming review		Critical area variances			
Minor preliminary plat revisions		Critical area reasonable use exceptions			
Boundary line adjustment					

Section 11. The interim controls outlined in Ordinance 1516 are hereby repealed as of the effective date of this ordinance.

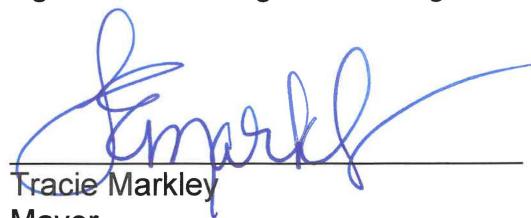
Section 12. Transmittal to Department of Commerce. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce, as required by law.

Section 13. Severability. If any section, sentence, clause, or phrase of this ordinance shall 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 14. Correction of Errors. The city clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 14. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

ADOPTED by the Council of the City of Gig Harbor at a regular meeting thereof,
held this 26th day of February, 2024.



Tracie Markley
Mayor

Approved as to form:



Daniel Kenny
City Attorney

Attest:



Joshua Stecker, CMC
City Clerk