



**Agenda Planning Commission
Open Public Hearing
Gig Harbor Civic Center
Thursday, January 18, 2024 5:30 P.M.**

This meeting may also be accessed through Zoom at <https://zoom.us/j/95353411299> or by calling (253) 215- 8782 and entering Meeting ID 953 5341 1299. Please see the Public Comment & Decorum section at the end of this agenda for information on options to make public comment.

This meeting may also be viewed live in the Council Chambers at the Civic Center.

- I. **Call to Order/Roll Call:**
- II. **Approval of Minutes:**
- III. **Public Comment Non Agenda Items:**
- IV. **Agenda Items for Formal Review:**
 - a. Public Hearing Ordinance 1516 Zoning Controls pertaining to Site Specific Rezones and Height Restriction Area Variance
 - i) Announcement of Application
 - ii) Open Public Meeting Announcement
 - iii) Staff Report
 - iv) Applicant Introduction and Presentation
 - v) Public Comment (See Assistance Memo)
 - vi) Discussion
- V. **Other Business** Next meeting Thursday, February 1, 2024
- VI. **Adjournment**

PUBLIC COMMENT & DECORUM

The city desires to allow a maximum opportunity for public comment. However, the business of the Planning Commission must proceed in an orderly, timely manner. The purpose of a Planning Commission meeting is to advise on subjects prescribed by the City Council; it is not a public forum.

Speakers will be allotted 3 minutes per individual, unless revised by the chair. In-

person comments shall be made from the microphone, first giving the speaker's name and address. Anyone making "out of order" comments may be subject to removal from the meeting.

Instead of making oral comments, written comments may be submitted to the Planning Commission at MThomas@gjgharborwa.gov.

All remarks shall be addressed to the commission as a body and not to any specific commissioner. All speakers shall be courteous in their language and deportment and shall not engage in or discuss or comment on personalities or indulge in derogatory remarks or insinuations with regard to any commissioner, or any member of the staff or the public.

There will be no demonstrations during or at the conclusion of any public comment. These guidelines are intended to promote an orderly system of holding public meetings, to give every person an opportunity to be heard and to ensure that no individuals are embarrassed by voicing their opinions.

AMERICANS WITH DISABILITIES (ADA) ACCOMMODATIONS

ADA accommodations can be provided upon request. Those requiring special accommodations should contact the city clerk at cityclerk@gjgharborwa.gov or (253) 853-7613 at least 24 hours prior to the meeting.



**Minutes for Gig Harbor Planning Commission
Gig Harbor Civic Center
Thursday, December 21, 2023 5:30 P.M.**

- I. **Call to Order/Roll Call:** Chair Krawczyk called the meeting to order at 5:30. Commissioner Tessicini, Snodgrass, Jordan virtually until 6:15, and Bradbury were present. Commissioner Burcar was excused.
Staff: Community Development Director, Carl de Simas; Principal Planner, Robin Bolster-Grant; Senior Planner, Jeremy Hammar and Planning Technician, Michelle Thomas
- II. **Approval of Minutes:** Move to approve minutes for December 7, 2023 (Bradbury/Tessicini) Unanimously approved.
- III. **Public Comment:** No public comments
- IV. **Agenda Items:**
 - a. Ordinance 1516 – Zoning Controls pertaining to Site Specific Rezones and Height Restriction Area Variance – Presentation Hammar and Commission and Staff discussion.
- V. **Other Business:** Next meeting Thursday, January 4, 2024, discussing Community Design Element of the Comprehensive Plan update. January 18th, 2024, open public hearing for recommendation on Ordinance 1516 Zoning Controls pertaining to Site Specific Rezones and Height Restriction Area Variance
- VI. **Adjournment:** 6:17

Michelle Thomas

Michelle Thomas
Planning Technician

From: [Vicky](#)
To: [Michelle Thomas](#); [Jeremy Hammar](#)
Subject: Re: Ordinance 1516
Date: Saturday, January 6, 2024 12:54:42 PM

Jeremy,

I have revised my comments based on your feedback. Please utilize this revised version.

Best,

Vicky Alsaker

On Jan 5, 2024, at 12:14 PM, Vicky <valsaker@yahoo.com> wrote:

Dear Planning Commission,

The following are my comments pertaining to proposed Ordinance 1516.

I believe the following criteria is a bit obscure and requires further definition to reflect the primary reason height variances exist which would be namely to not obstruct the view of surrounding neighbors thereby potentially diminishing their property values.

Below is Section 3 17.62.040 as I currently read it.

In addition, the hearing examiner shall make findings of fact setting forth and demonstrating that the following circumstances exist:

- A. The request furthers the goals, policies and objectives of the comprehensive plan.*
- B. The 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. Views from adjacent properties will not be adversely affected.*

Below is Section 3 17.62.040 with proposed modifications.

In addition, the hearing examiner shall make findings of fact setting forth and demonstrating that the following circumstances exist:

~~A. The request furthers the goals, policies and objectives of the comprehensive plan.~~

"I would strike this sentence in its entirety. The comprehensive plan may, for instance, call for creating a vibrant downtown but that can be achieved without obstructing views. While there may be an economic basis, for the entity requesting a height variance in order to achieve their financial goals, that should not be at the expense of impacting surrounding neighbors and their property values."

~~B. The site does not currently possess a view of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows:~~

"The main criteria is not whether the site possesses a view but rather whether what is done on that site will adversely affect surrounding properties. I would rework this criteria to read;

B. The site, developed to a height of X, will not obstruct views of surrounding properties of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows. (Note: The tricky part of this criteria is defining surrounding properties. In general, I believe it should refer to any and all properties that would be impacted.)

~~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;~~

"I am struggling to understand what this has to do with height restrictions and the potential to obscure views. It seems to me the greater the slope the less the likelihood of obscuring views."

~~D. Views from adjacent surrounding properties will not be adversely affected.~~

"The term 'adjacent' can be construed to mean lying near, close to or adjacent. By using the term 'adjacent' you are leaving the possibility that a neighbor, one block away, who's view may be block by the proposed variance would not have the option to object."

Add

*E. Approval of this variance will not set or be construed as a precedence for future variances.**

**Note: There was a recent variance request regarding a downtown property for a height variance. I am going off memory at this point but I believe the variance was requested so that the property owner could build a home commensurate with the property value. The variance was not approved but I want to caution that economic viability, while a consideration for the applicant, is not the primary goal of height restrictions. Height restrictions are in place to protect the surrounding property owners' (built out or vacant) value.*

Thank you for your time and consideration of these changes.

Vicky Alsaker

From: [michael shipman](#)
To: [Michelle Thomas](#)
Subject: Attn: Planning Commission
Date: Sunday, January 14, 2024 6:44:44 PM

Dear Commissioners,

I have been attending/viewing your public meetings over the past year and want to thank you for your leadership and hard work. I especially want to recognize the due diligence on your part during the short-term rental ordinance work. You were challenged with this issue which required substantial research, input and study. Your work product was instrumental in guiding the city council. As a result, it appears your efforts and Council's efforts are producing great results within the community. Thank you.

With regard to the upcoming work and revisions on Ordinance 1516, I want to encourage you to challenge yourselves to strongly support a Hearing Examiner approach in reviewing, studying, and comparing local requests for height variances and/or rezones. Doing so will protect the city (and tax payers). I strongly argue that your committee does not have the time, broad regional and municipal case law knowledge, expertise or legal experience to tackle this type of issue. It is my assessment this effort would require more than you could muster and in fact your recommendations or decisions might very well put the city at risk legally. Hearing examiners have legal expertise and must remain unbiased. In this case, an examiner, not being a member of the local community is of value to the decision process; it ensures a fair unbiased decision. Hearing examiners have no stake in the game other than to look at case law, data and/or testimony to guide their decision. Your commission does not have the budget, resources or access. Additionally, either way a planning commission or city council might decide could very well be challenged legally by the applicant or surrounding neighbors. These issues are emotional at best. Why not put that decision in front of the expert, the hearing examiner. Doing so saves time, effort, and expense on all sides.

Over the past decade, many planning commissions and city councils have removed themselves from final approvals and appeals of these types of decisions, delegating that responsibility to hearing examiners. This means that any appeals of a hearing examiner's decision are taken directly to superior court rather than to the city council. Why have those cities, including Covington, Kirkland, Mercer Island, Shoreline, Edmonds and others, taken this step? Why should you consider following their lead? There are many reasons, but here are the top three:

1. One major concern is the financial risk of having lay elected or volunteer officials with no real training or background in the law attempting to, in effect, practice law.
2. These cases can be extremely time intensive.
3. The quasi-judicial role frequently places commissioners and/or city council members in an untenable lose-lose predicament.

Again, I encourage you to pass on this issue and encourage the city council to rely on their Hearing examiner. This approach protects everyone and also facilitates a fair and unbiased decision.

Best Regards,
Michael Shipman
9512 Woodworth Ave. Gig Harbor, WA 98335

Email: mshipmanwa@gmail.com



To: Gig Harbor Planning Commission

From: Jeremy Hammar, Senior Planner
Planning Division

Date: January 11, 2024

Re: Zoning Controls Pertaining to Site Specific Rezones and Height Restriction Area Variances.

Overview:

At the upcoming Planning Commission (PC) meeting on January 18, 2024, a Public Hearing will be held to hear public testimony regarding the proposed zoning controls pertaining to site-specific rezones and height restriction area variances. At the PC study sessions dated November 16, 2023 and December 21, 2023, Commissioners reviewed the Interim Ordinance and discussed a possible change to the portion of the ordinance designating the hearing examiner as the appropriate body to make a recommendation to City Council. Staff has incorporated the input provided to inform the current draft and seeks PC's recommendation.

Background:

On September 7, 2023 the city council adopted Interim Ordinance 1516 pertaining to the city's height restriction area map, processing amendments to the height restriction area map, and processing site-specific rezone applications. The ordinance was brought forward to institute interim zoning controls rather than permanent regulations due to permit applications already in process which were relative to the amendments. These interim zoning controls are effective for a period of 6-months before permanent zoning controls must be adopted or the interim controls are extended for another period of up to 6-months.

It was brought to staff's attention that the process adopted in the Gig Harbor Municipal Code (GHMC) for amending the city's zoning map through a site-specific rezone was improper. A site-specific rezone, typically an application submitted by a private property owner and relative to a specific property, was processed as a Type III permit application, authorizing the hearing examiner to make the final decision regarding project approval. Site-specific rezones, however, are considered quasi-judicial decisions and amend the city's zoning map, and therefore should be decided by the city council. Ordinance 1516 rectifies that process error in the code.

In addition, while processing an application for a height restriction area (HRA) map amendment, staff found that the code language describing the HRA was ambiguous. Section 17.62.020 GHMC stated that the HRA standards “shall be imposed as an overlay zone shown on the city’s official height restriction area map, which depicts the property subject to the height restriction.” This language did not describe what the HRA map is or how it is adopted. An overlay is typically adopted as part of a jurisdiction’s zoning map. This was not the case, nor did this section prescribe such. Staff’s research into the matter found that the code section did originally describe the HRA as the “height overlay district” and noted that it was an overlay to be shown on the city’s official zoning map. Having the HRA shown as an overlay on the zoning map is preferred and helps to better prescribe amendments to the overlay and/or the standards for properties within the overlay.

As it stood before the adoption of Ordinance 1516, the city accepted applications for amendments to the HRA map as a Type III process (final decision made by the hearing examiner) whereby approval led to removal of the property from the HRA altogether. If the HRA is truly a zoning overlay as originally intended, changing the boundaries of the HRA should amount to a site-specific rezone. As noted previously, a site-specific rezone will now be decided by the city council with a recommendation provided by the hearing examiner. Secondly, if an owner of property within the HRA wants to propose a project that would deviate from the HRA standards (maximum height of 16-feet), the proposal would be the subject of a variance, as would any other proposal to deviate from a performance standard in GHMC. The ordinance corrected this additional, but relative error in process by adding the HRA to the city’s zoning map and clarifying the process for deviating from the HRA standards and removing property from the HRA overlay zone. The ordinance does not affect the 16-foot maximum height standard of the HRA.

Again, staff seeks PC’s recommendation on this matter and is happy to discuss any questions that commissioners may have.

Attachments:

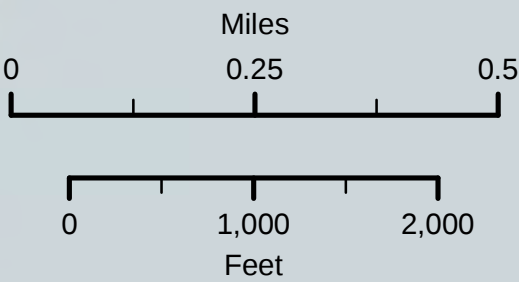
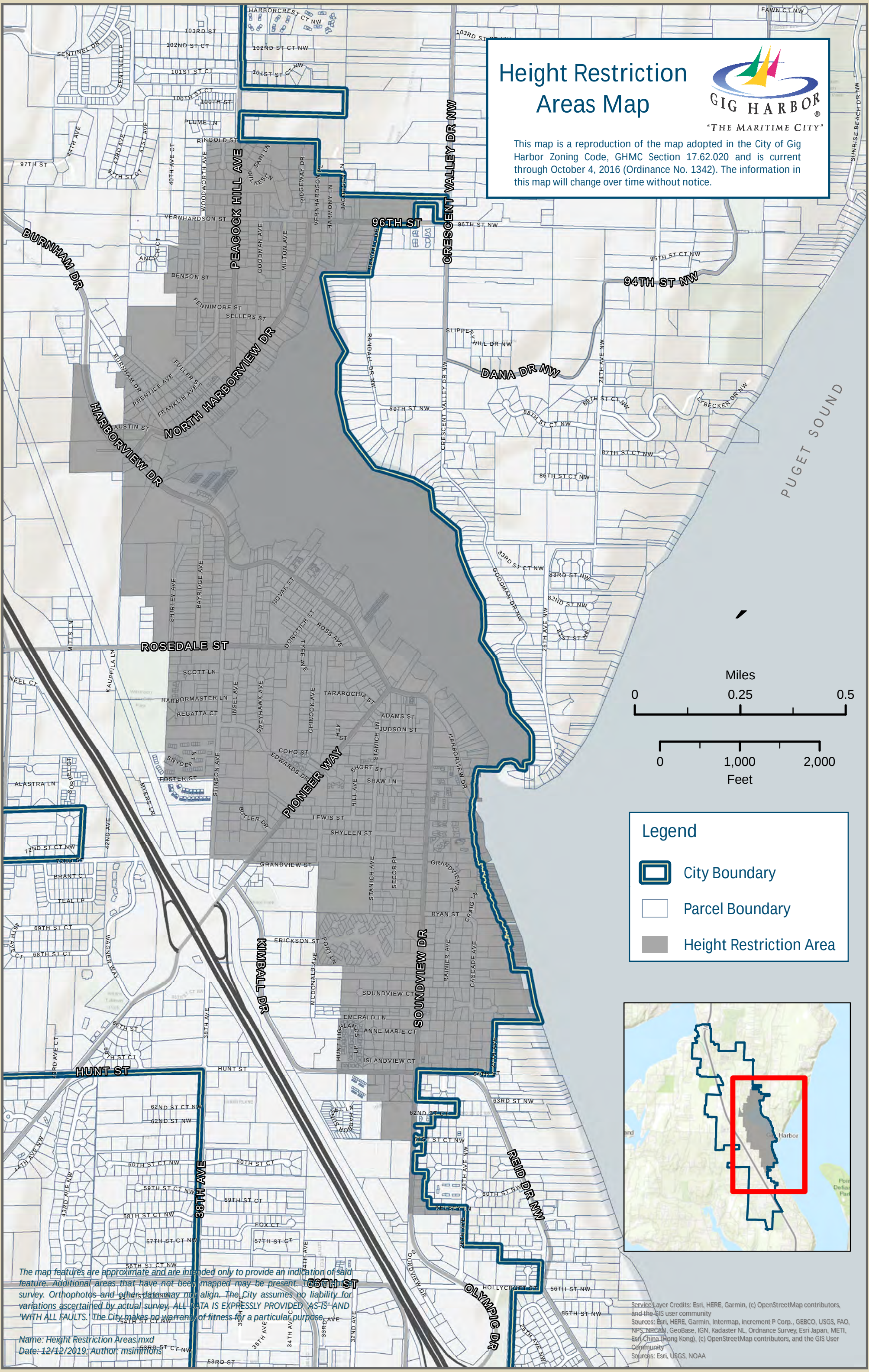
Exhibit A – Draft Ordinance

Exhibit B – Ordinance 1516

Height Restriction Areas Map

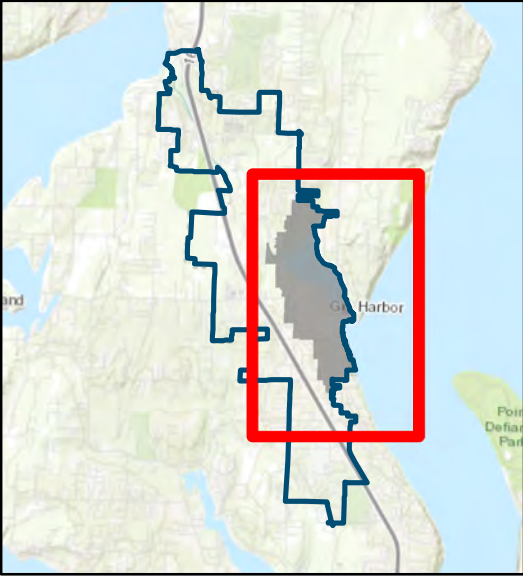


This map is a reproduction of the map adopted in the City of Gig Harbor Zoning Code, GHMC Section 17.62.020 and is current through October 4, 2016 (Ordinance No. 1342). The information in this map will change over time without notice.



Legend

- City Boundary
- Parcel Boundary
- Height Restriction Area



The map features are approximate and are intended only to provide an indication of said feature. Additional areas that have not been mapped may be present. Orthophotos and other data may not align. The City assumes no liability for variations ascertained by actual survey. ALL DATA IS EXPRESSLY PROVIDED 'AS-IS' AND 'WITH ALL FAULTS'. The City makes no warranty of fitness for a particular purpose.

Name: Height Restriction Areas.mxd
Date: 12/12/2019; Author: msimmons

Service Layer Credits: Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community
Sources: Esri, USGS, NOAA

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING INTERIM 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, under the authority of RCW 35A.63.220 and RCW 36.70A.390, the City may impose interim regulations to be effective for a period of up to six months, and for six-month intervals thereafter; and

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 the technical nature of a site-specific rezone, it would be proper for the city council to cede the hearing and receive a recommendation from the city's hearing examiner relative to a specific proposal; 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 Gig Harbor City Council would like to make certain changes to the city's development regulations and administrative development regulations on an interim basis to provide city staff and the planning commission time to study these matters and make recommendations on permanent regulations relative to processing applications for site-specific rezones and height restriction area variances.

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 Height restriction area map. The standards of this chapter shall be imposed as an overlay zone shown on the city's official 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 Height restriction area variance. Variances from the standards of this section shall be project specific and 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

¹ City Ordinance Number 1342

hearing examiner shall make findings of fact setting forth and demonstrating that the following circumstances exist:

- A. The request furthers the goals, policies and objectives of the comprehensive plan;
- B. The 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. 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.

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 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 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

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.

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 map amendment. Applications for amendments to the zoning 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 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 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 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	TYPE V

Recommendation made by:	N/A	N/A	N/A	N/A	N/A; <u>Planning Commission</u> hearing examiner 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, then	No	Yes, before council to render final decision	Yes, or council could hold its own hearing

			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 or 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, height restriction area variance	Major amendment to PRD	Site-specific rezone ²	Zoning text amendments ; area-wide zoning map amendments

² A site-specific rezone may have only one public hearing to be conducted by the city's hearing examiner Planning Commission.

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	Mobile/manufactured home park or subdivision			
Administrative design review ¹	Administrative interpretations	Performance-based height exception			
Land clearing	Shoreline permit exemptions ²	Changes from one nonconforming use to another			
Home occupation permit	Short-term rental permit	Critical Area Variance			

Alternative landscape plan		Critical area reasonable use exceptions			
Nonconforming review					
Minor preliminary plat revisions					
Boundary line adjustment					

Section 11. 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 12. Hearing. In accordance with the requirements of state law, a public hearing on these interim regulations will be held within 60-days of adoption of this ordinance.

Section 13. Duration of Interim Zoning Control. The interim zoning control adopted herein shall be in effect for a period of 6-months, commencing on the effective date of this ordinance unless the city council shall adopt appropriate permanent development regulations which replace this interim ordinance, or unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Gig Harbor City Council.

Section 14. 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 15. 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 16. 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 ___ day of _____, 2023.

Tracie Markley
Mayor

Approved as to form:

Attest:

Daniel Kenny
City Attorney

Joshua Stecker, CMC
City Clerk

ORDINANCE 1516

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING INTERIM 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, under the authority of RCW 35A.63.220 and RCW 36.70A.390, the City may impose interim regulations to be effective for a period of up to six months, and for six-month intervals thereafter; and

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 the technical nature of a site-specific rezone, it would be proper for the city council to cede the hearing and receive a recommendation from the city's hearing examiner relative to a specific proposal; and

WHEREAS, the Gig Harbor City Council would like to make certain changes to the city's development regulations and administrative development regulations on an interim basis to provide city staff and the planning commission time to study these matters and make recommendations on permanent regulations relative to processing applications for site-specific rezones and height restriction area variances;

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 subject to the complete application requirements, permit application procedures, required findings and duration of approval requirements set forth in Chapter 17.66~~

¹ City Ordinance Number 1342

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	TYPE V
Recommendation made by:	N/A	N/A	N/A	N/A	N/A; <u>hearing examiner for site specific rezones</u>	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	Yes, or council could hold its own hearing

			then before council		final decision	
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 rezone</u> ²	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	Amendment to height restriction area map			
Administrative design review ¹	Administrative interpretations	Mobile/manufactured home park or subdivision			

² A site-specific rezone may have only one public hearing to be conducted by the city's hearing examiner.

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. 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 12. Hearing. In accordance with the requirements of state law, a public hearing on these interim regulations will be held within 60-days of adoption of this ordinance.

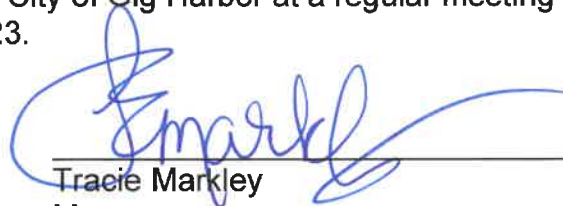
Section 13. Duration of Interim Zoning Control. The interim zoning control adopted herein shall be in effect for a period of 6-months, commencing on the effective date of this ordinance unless the city council shall adopt appropriate permanent development regulations which replace this interim ordinance, or unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Gig Harbor City Council.

Section 14. 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 15. 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.

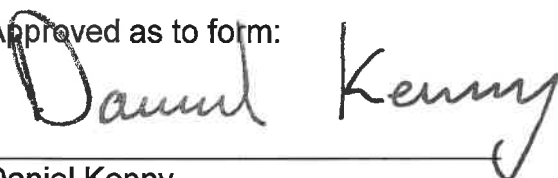
Section 16. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

ADOPTED by the City Council of the City of Gig Harbor at a regular meeting thereof, held this 7th day of September, 2023.



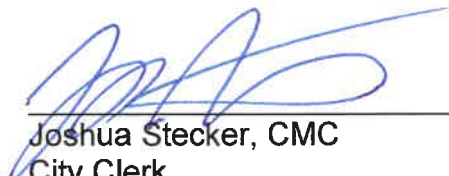
Tracie Markley
Mayor

Approved as to form:



Daniel Kenny
City Attorney

Attest:



Joshua Stecker, CMC
City Clerk