ORDINANCE NO. 1278

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, ADOPTING AN UPDATED SHORELINE MASTER PROGRAM PURSUANT TO THE REQUIREMENTS OF WASHINGTON ADMINISTRATIVE CODE CHAPTER 173-26; AMENDING CHAPTERS 1 (INTRODUCTION), 4 (ENVIRONMENT ELEMENT) AND 9 (SHORELINE MANAGEMENT) OF THE CITY'S COMPREHENSIVE PLAN AND AMENDING GIG HARBOR MUNICIPAL CODE TITLES 17 AND 19; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Shoreline Management Act of 1971, codified at chapter 90.58 RCW ("SMA"), requires all cities and counties with "shorelines of the state" to prepare and adopt a Shoreline master Program that is based on state laws and rules, but tailored to the specific jurisdiction; and

WHEREAS, in 1975, the City of Gig Harbor adopted its SMA-based Shoreline Master Program ("SMP") and last amended it in 1994; and

WHEREAS, effective January 17, 2004, the regulations implementing the SMA promulgated under chapter 173-26 WAC (the "SMA guidelines") were substantially revised and the City's current program requires a comprehensive master program update in order to achieve the procedural and substantive requirements of the SMA guidelines; and

WHEREAS, in 2008, the City formed a stakeholders committee to identify shoreline issues for review and review draft shoreline environmental designations, draft policies and draft modification matrices; and

WHEREAS, between October 2008 and August 2009, the stakeholder committee conducted 15 meetings; and

WHEREAS, on November 19, 2008, the City held an open house to solicit comments and answer questions from the community regarding the master program update; and

WHEREAS, on August 24, 2009, the City executed a $93,000 Grant Agreement with the State (SMA Grant Agreement No. G1000028) Department of Ecology (DOE) to partially fund the update of its SMP; and

WHEREAS, based upon the stakeholder committee's review and comments received at the open house, in November 2009, the City produced a working draft SMP for Planning Commission review; and

WHEREAS, the Planning Commission commenced a 15-month review of the November 2009 working draft SMP on January 21, 2010; and

WHEREAS the Planning Commission held 36 work-study sessions between January 21, 2010 and April 21, 2011, held two open houses on January 21, 2010 and March 31, 2011, and held two public hearings on November 18, 2010 and March 31, 2011; and

WHEREAS, based on the discussions at the Planning Commission, input received at the open houses and testimony entered into the record at the two public hearings, the Planning Commission revised the working draft to better reflect the specific characteristics of the Gig Harbor city and UGA shorelines; and

WHEREAS, on April 11, 2011, the Planning Commission voted 5-0 to recommend the Planning Commission's draft SMP for adoption by the City Council; and

WHEREAS, the Planning Commission and City Council held a joint work-study session to discuss the Planning Commission recommended draft SMP on May 21, 2011; and

WHEREAS, the City Council held a work-study session on September 19, 2011 to discuss issues related to the master program, and to provide staff with direction regarding its response to such issues; and

WHEREAS, the City Council held a public hearing on the revised Planning Commission draft of the SMP on June 11, 2012; and

WHEREAS, the proposed SMP update was forwarded to the Washington State Department of Commerce on February 29, 2012, pursuant to RCW 36.70A.106; and

WHEREAS, the City's SEPA Responsible Official issued a Determination of Nonsignificance (DNS) pursuant to WAC 197-11-340(2) on February 29, 2012; and

WHEREAS, Robert Frisbie filed a timely appeal of the City's DNS on April 23, 2012; and

WHEREAS, the City Council conducted a SEPA appeal hearing on May 29, 2012; and

WHEREAS, by a vote of 6-0, the City Council denied the SEPA appeal as documented in Resolution 902 passed June 11, 2012; and

WHEREAS, at an October 22, 2012 work-study session of the City Council, the city staff presented recommendations on further revisions to the Planning Commission recommended draft needed to address written comments and testimony provided at the June 11, 2012 public hearing; and

WHEREAS, the revisions recommended at the October 22, 2012 work-study session and other minor non-substantive housekeeping changes have been incorporated into the December 10, 2012 draft SMP; and

WHEREAS, on December 17, 2012, City Council approved Resolution No. 921 to provide the approval necessary to forward the proposed SMP update to the DOE for review and comment prior to the City's formal adoption of the SMP in accordance with WAC 173-26-110; and

WHEREAS, between March 21, 2013 and April 22, 2013, DOE conducted its public comment period on the city's December 12, 2012 draft SMP and conducted its formal review of the draft document; and

WHEREAS, a total of three individuals or organizations submitted comments on the proposed amendments; and

WHEREAS, the public comments were provided to the city for review and comment; and

WHEREAS, on August 14, 2013 the city responded to DOE regarding the comments in its Responsiveness Study (Attachment "D" to Ecology's Conditional Approval Letter dated September 20, 2013) and agreed to further revise specific sections of the draft SMP based on the comments; and

WHEREAS, per RCW 36.70A.130(2)(a)(iii) the City is allowed to amend the Comprehensive Plan in conjunction with adoption of the SMP for internal consistency; and

WHEREAS, on July 11, 2013 the City met the procedural requirements of RCW 36.70A.106, requiring a 60 day notice to the Department of Commerce prior to adoption of the SMP, Comprehensive Plan amendments and development regulations; and

WHEREAS, on September 5, 2013 the Planning Commission reviewed the proposed amendments to the Comprehensive Plan and authorized the Chair to sign the findings to adopt; and

WHEREAS, on September 6, 2013 the City met the procedural requirements of RCW 36.70A.106, receiving expedited review approval from the Department of Commerce prior to adoption of the SMP, Comprehensive Plan amendments and Development Regulations relating to Gig Harbor Municipal Code Titles 17 and 19; and

WHEREAS, by letter dated September 20, 2013, DOE issued its Conditional Approval Letter, together with Attachment "A," Findings and Conclusions for Proposed Comprehensive Update to the city of Gig Harbor Shoreline Master Program; Attachment "B," Ecology Required Changes; Attachment "C," Ecology Recommended Changes; and, Attachment "D," the city's Responsiveness Summary to Public Comments received during Ecology comment period 3/21 to 4/22/13; and

WHEREAS, the city incorporated DOE's required and recommended changes set forth in Attachments "B" and "C", respectively, into the November 12, 2013 draft SMP; and

WHEREAS, the city further revised the November 12, 2013 draft SMP based on public comment as set forth in its Responsiveness Summary; and

WHEREAS, on October 23, 2013 public notice for the November 12, 2013 public hearing on the SMP was published in the Gateway and provided to owners of property within 300 feet of the area subject to the master program; and

WHEREAS, on October 30, 2013, public notice was published in the Gateway that addressed the public hearings for the SMP, Comprehensive Plan and Gig Harbor Municipal Code Amendments;

WHEREAS, the Gig Harbor City Council considered the ordinance at first reading and public hearing on November 12, 2013; and

WHEREAS, based on public comment, the City Council directed staff to further revise the SMP as described in Exhibit "C"; and

WHEREAS, on November 25, 2013, the City Council held a second reading during a regular City Council meeting; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Adoption. The Gig Harbor City Council hereby adopts the Shoreline Master Program dated November 12, 2013 as set forth in **Exhibit A** attached hereto and incorporated herein by this reference as amended by **Exhibit C.**

Section 2. Findings in support of adoption of the SMP and associated documents. The City Council adopts the recitals set forth above in support of adoption of the SMP and consistency amendments to the City's Comprehensive Plan and Development Regulations. In addition, the Gig Harbor City Council makes the following findings:

A. The City Council finds that the original Gig Harbor SMP was approved by DOE in 1975 and was last amended in 1994.

B. The City Council finds that the proposed shoreline master program and its associated Comprehensive Plan and Gig Harbor Municipal Code amendments are required to comply with a State of Washington statutory deadline for a comprehensive shoreline master program update pursuant to RCW 90.58.080 and RCW 90.58.100.

C. The City Council finds that the master program amendment is also required to comply with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26.

D. The City Council finds that the Shoreline Inventory and Characterization Report has properly documented current shoreline conditions within the City, including Gig Harbor Bay, the Tacoma Narrows and a small shoreline segment on Henderson Bay by analyzing the shoreline in six segments; Colvos Passage, Gig Harbor Spit, East Gig Harbor, Downtown Gig Harbor, Tacoma Narrows, Henderson Bay and Burley Lagoon.

E. The City Council finds that in support of the Shoreline Inventory and Characterization Report, the city completed an inventory of net sheds, an existing conditions summary of marinas and moorage facilities located in the city and a shoreline characterization by parcel.

F. The City Council finds that this comprehensive SMP update is intended to entirely replace the City's existing SMP. The SMP will regulate approximately three miles of marine shoreline within the city (approximately 6.7 when including the Urban Growth Area (UGA). The City proposes to use the minimum jurisdiction allowed including the water areas and bedlands of all shoreline waterbodies, shorelands located within 200 feet of the Ordinary High Water Mark and all associated wetlands.

G. The City Council finds that it is appropriate at this time not to include the UGA along Henderson Bay and Burley Lagoon.

H. The City Council finds that all UGA will continue to be regulated by the Pierce County SMP until annexed into the City.

I. The City Council finds that the proposed SMP has properly incorporated all required SMP elements including Shorelines of Statewide Consistency, Shoreline Master Program Goals and Policies, Shoreline Environmental Designations, General Master Program Provisions, Shoreline Modifications, Shoreline Uses, Critical Area Provisions, and Administrative Provisions and Definitions.

J. The City Council finds that draft Cumulative Impacts Analysis (CIA) Reports dated November, 2009, November 2010 and March 2011 with Addendum dated May, 2011 were prepared evaluating the cumulative impacts of reasonably foreseeable future development that could be authorized under draft versions of the SMP. A final CIA was issued in May, 2012. As a requirement of the State Grant that partially funded the SMP update, a No Net Loss Summary Memorandum dated May, 2011 was also prepared.

K. The City Council finds that the City properly developed a restoration plan as an element of the new, updated SMP based on information in the Shoreline Inventory and Characterization Report. The plan, dated April, 2011, identifies site specific and programmatic restoration opportunities and actions for the City. The programmatic opportunities focus on education and incentives, the marine nearshore, infrastructure, and planning and coordination. More specific opportunities are identified by planning segment, consistent with those originally identified in the Shoreline Inventory and Characterization Report.

L. The City Council finds that substantial public participation was included in the development of the updated SMP. A stakeholders committee was formed to identify shoreline related issues for review and review early draft documents, and the city established a web site devoted to the update effort.

M. The City Council finds that the Planning Commission began its review of the draft in January, 2010; held two open houses and numerous work-study sessions, all open to the public. Public hearings were conducted by the Commission on November 18, 2010 and March 31, 2011.

N. The City Council finds that it conducted a joint-work study session with the Planning Commission on May 21, 2011 and held a public hearing on the February 29, 2012 draft SMP on June 11, 2012.

O. The City Council finds that by Resolution No. 921 approved on December 17, 2012, staff was authorized to submit the December 10, 2012 draft SMP to DOE for its public and staff review process.

P. The City Council finds that all required and recommended revisions set forth in Attachments "B" and "C" of the DOE Conditional Approval Letter of September 20, 2013, together with additional revisions made in response to public comments received by DOE during its review have been incorporated into the current November 12, 2013 draft SMP.

Q. The City Council finds that by adopting the November 12, 2013 draft it will have complied with the requirements of Ecology SMA Grant No. G1000028, the State SMA and the procedural and substantive requirements of WAC 173-26.

Section 3. Consistency with Comprehensive Plan. Pursuant to RCW 36.70A.130(2)(a)(iii), the City Council hereby amends Chapters 1, 4, and 9 of the City's Comprehensive Plan as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference.

Section 4. Consistency with Development Regulations. Pursuant to RCW 36.70.A.130(2)(a)(iii), the City Council hereby amends the Development Regulations as listed below:

A. Subsection 17.04.360.A of the Gig Harbor Municipal Code is hereby amended as follows:

> A. "Gross floor area" in the RB-1 zoning district means:
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> 1. The sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls. The gross floor area includes basement space, garage space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, finished attics with a headroom of seven and one-half feet or more, penthouse floors, interior balconies and mezzanines, and enclosed porches. The gross floor area shall not include accessory water tanks and cooling towers, mechanical equipment, and unfinished attics regardless of headroom.
>
> 2. For purposes of determining off-street parking requirements, gross floor area shall mean the sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls including basement space, the

elevator shafts and stairwells at each floor, mechanical equipment rooms, finished attics with a headroom of seven and one-half feet or more, penthouse floors, interior balconies and mezzanines, enclosed porches; but, shall not include garage space, accessory water tanks and cooling towers, mechanical equipment and unfinished attics regardless of headroom.

B. Subsection 17.04.360.B of the Gig Harbor Municipal Code is hereby amended as follows:

B. "Gross floor area" in the PI, R-1, RLD, R-2, RMD, R-3, RB-2, DB, B-1, B-2, C-1, PCD-C, ED, WR, MW, WC, PCD-BP, PCD-NB and MUD zoning districts means:

1. The sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls. The gross floor area includes garage space, the elevator shafts and stairwells at each floor, mechanical equipment rooms, penthouse floors, interior balconies and mezzanines, and enclosed porches. The gross floor area shall not include accessory water tanks and cooling towers, mechanical equipment, attics as defined by GHMC 17.04.086, and underground floor area as defined by GHMC 17.04.362.

2. For purposes of determining off-street parking requirements, gross floor area shall mean the sum of the horizontal area of the floor(s) of a building or buildings measured from the exterior faces of exterior walls and from centerlines of division walls including the elevator shafts and stairwells at each floor, mechanical equipment rooms, penthouse floors, interior balconies and mezzanines, enclosed porches and underground floor area; but, shall not include garage space, accessory water tanks and cooling towers, mechanical equipment and attics.

C. Section 17.04.420 of the Gig Harbor Municipal Code is hereby amended as follows:

17.04.420 Impervious surface.

"Impervious surface" means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads with compacted sub-grade, packed earthen

materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities and tidelands shall not be considered as impervious surfaces.

D. Subsection 17.07.002.A of the Gig Harbor Municipal Code is hereby amended as follows:

17.07.002 Violations.

A. It is a violation of GHMC Titles 17 and/or 16 and the Shoreline Master Program for any person to initiate, maintain or cause to be initiated or maintained the use of any structure, land or property within the city of Gig Harbor without first obtaining the permits or authorizations required for the use by the aforementioned codes.

E. Subsection 17.07.002.B of the Gig Harbor Municipal Code is hereby amended as follows:

B. It is a violation of GHMC Titles 17 and/or 16 and the Shoreline Master Program for any person to use, construct, locate, demolish or cause to be used, constructed, located, or demolished any structure, land or property within the city of Gig Harbor in any manner that is not permitted by the terms of any permit or authorization issued pursuant to the aforementioned codes; provided, that the terms or conditions are explicitly stated on the permit or the approved plans.

F. Subsection 17.07.002.C of the Gig Harbor Municipal Code is hereby amended as follows:

C. In addition to the above, it is a violation of GHMC Titles 17 and/or 16 and the Shoreline Master Program to:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with the aforementioned codes;

2. To misrepresent any material fact in any application, plans or other information submitted to obtain any building or construction authorization;

3. Fail to comply with any of the requirements of GHMC Titles 17 and/or 16 and the Shoreline Master Program.

G. Subsection 17.07.004.B of the Gig Harbor Municipal Code is hereby amended as follows:

B. Upon presentation of proper credentials, the administrator may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant, in order to perform the duties imposed by GHMC Titles 16 and/or 17 and the Shoreline Master Program.

H. Subsection 17.07.004.D of the Gig Harbor Municipal Code is hereby amended as follows:

D. It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier or other person responsible for the condition of the land and buildings within the scope of GHMC Titles 16 and/or 17 and the Shoreline Master Program.

I. Section 17.07.006 of the Gig Harbor Municipal Code is hereby amended as follows:

17.07.006 Investigation

The administrator shall investigate any structure or use which the administrator reasonably believes does not comply with the standards and requirements of GHMC Titles 16 and/or 17 and the Shoreline Master Program. If the administrator determines that a violation has occurred, the administrator shall use the enforcement process found in Chapter 19.16 GHMC.

J. Section 17.14.020 of the Gig Harbor Municipal Code is hereby amended as follows:

17.14.020 Land use matrix.[1]

Uses	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1[20]	PCD-C	ED[18]	WR	WM	WC	PCD-BP	PCD-NB	MUD[26]
Museum	P	-	-	-	-	-	-	-	-	-	C	C	P	-	C	C	P	-	-	-
Parking lot, commercial	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-

K. Section 17.48.070 of the Gig Harbor Municipal Code is hereby amended as follows:

17.48.070-Parking and loading facilities

Parking and loading facilities on private property shall be provided in accordance with the requirements of Chapter 17.72 GHMC., Although historic net sheds are excluded from the maximum gross floor area

requirements in GHMC 17.48.040, this exclusion shall not affect the calculation of the parking requirements.

L. Subsection 17.66.050.A of the Gig Harbor Municipal Code is hereby amended as follows:

A. Interpretations – Planning Director.

1. The planning director shall review and determine any questions involving the proper interpretation or application of the provisions of this title that may be requested by any property owner, tenant, government officer, department, board, council or commission. The planning director's decision shall be in keeping with the spirit and intent of this title and of the comprehensive plan. Prior to making interpretations of the requirements of the city's Shoreline Master Program, the Planning Director shall consult with the Department of Ecology when issuing any formal written interpretation to insure consistency with the purpose and intent of Chapter 90.58 RCW and the applicable guidelines. Ecology shall be provided with 30-days from receipt of the city's "request for comments" to submit formal comments to the city on any interpretation.

M. Subsection 17.68.010.B of the Gig Harbor Municipal Code is hereby amended as follows:

B. Because nonconformities do not conform to the requirements of the regulations within their zoning districts, they are declared by this chapter to be incompatible with the permitted uses in the districts involved. A nonconforming use of land shall not be extended or enlarged after passage of the ordinance codified in this chapter by the addition of other uses. To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction or designated use of any building for which application for a building permit was made prior to the effective date of the adoption or an amendment of the ordinance codified in this title.

N. Section 17.68.015 of the Gig Harbor Municipal Code is hereby amended as follows:

17.68.015 Applicability to property regulated under the shoreline master program

This chapter shall not apply to property within the jurisdiction of the Shoreline Management Act and the city's Shoreline Master Program. Properties within the jurisdiction of Act and master program shall be

regulated pursuant to Shoreline Master Program Section 8.11-Nonconforming Uses and Structures.

O. Section 17.78.020 of the Gig Harbor Municipal Code is hereby amended as follows:

17.78.020 Applicability

The standards as required by this chapter shall apply to all uses of land which are subject to site plan review, a land clearing permit, and to any new subdivision plat. GHMC 17.78.095 applies to all development in the area described by that section. Additionally, the requirements of Shoreline Master Program subsection 6.2.4-Regulations-Vegetation Conservation Strip, shall apply to all property within the jurisdiction of the city's Shoreline Master Program.

P. Section 17.78.040 of the Gig Harbor Municipal Code is hereby amended as follows:

17.78.040 Overlapping requirements.

In the event of a conflict between the standards for individual uses and other general requirements of this chapter, the more stringent shall apply. Determination of the appropriate standards shall be made by the planning director. In the event of a conflict between the standards for individual uses and other general requirements of this chapter with the requirements of Shoreline Master Program subsection 6.2.4, the requirements of the master program shall apply.

Q. Subsection 19.01.003.B of the Gig Harbor Municipal Code is hereby amended as follows:

19.01.003.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	Alternative	General variances,	Major		Zoning text

amendments to PUD/PRD	design review1	sign permit variances	amendment to PRD		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			
Land clearing	Shoreline permit exemptions 2	Performance-based height exception			
Home occupation 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					

1 In addition to the procedures in this title, applications for design review shall follow the procedures set forth in Chapter 17.98 GHMC.

[2] The Notice of Application requirements of section GHMC 19.02.004 and Notice of Decision requirements of section GHMC 19.02.007 shall not apply to shoreline permit exemptions. The decision shall be subject to the procedural requirements of Shoreline Master Program subsection 8.2.3 and the appeal procedures of GHMC 19.06.004.

Section 5. Transmittal to Department. Pursuant to RCW 36.70A.106, this Ordinance shall be transmitted to the Washington State Department of Commerce.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be 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 7. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 8. Effective Date. This Ordinance shall take effect 14 days after the date of the Department of Ecology's Final Approval Letter acknowledging the City's acceptance of the Department of Ecology's revisions, which revisions are contained in this Ordinance.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 25th day of November, 2013.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

FILED WITH THE CITY CLERK: 11/06/13
PASSED BY THE CITY COUNCIL: 11/25/13
PUBLISHED: 11/27/13
EFFECTIVE DATE: 14 days after DOE final approval
ORDINANCE NO: 1278