MORATORIA HANDBOOK
FOR MUNICIPALITIES

Association of Washington Cities
Risk Management Services Agency

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INTRODUCTION

The focus of this Handbook is to provide guidance on moratoria. Information has been included on the purpose of moratoria, the difference between the various types of moratoria and how to adopt a moratorium. Explanations have been provided of the purpose and importance of each step in the process, with tips on how to complete them. Form ordinances are attached to guide moratoria adoption.

We hope you will find the format and content of this Handbook helpful in your work, whether you are a municipal attorney, a member of the legislative body for a municipality, planner or city clerk. Feel free to contact the author, Carol Morris, at carol_a_morris@msn.com to ask questions or provide comments on this Handbook.

The Association of Washington Cities Risk Management Service Agency funded this Handbook. Member cities may call Carol Morris on the toll-free Land Use Hotline at 1-877-284-9870. The Land Use Hotline may be used for questions on moratoria, pre-litigation issues or other land use matters.
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Ordinance for adoption of a moratorium

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I. DEFINITIONS: What is a Moratorium?

A moratorium is an emergency measure adopted without notice to the public or public hearings, designed to preserve the status quo. A moratorium suspends the right of property owners to submit development applications and obtain development approvals while the local legislative body considers, drafts and adopts land use comprehensive plans and/or development regulations (or amendments thereto), to respond to new or changing circumstances not addressed in current laws.

A “permit moratorium” is usually adopted pending adoption of amendments to a comprehensive plan or development regulations. Permit moratoria have the following purposes:

-- to prevent a potential rush for permits whenever a community decides to review and update its comprehensive plan or development regulations (there is a possibility that the new regulations could reduce the development level);

-- to bar the submission of applications during the moratorium period and thereby prevent an applicant’s ability to vest rights under the existing development regulations, so that development inconsistent with the new regulations is not approved.

A “public facility moratorium” or “utility moratorium” may be adopted on an emergency basis without notice to the public or public hearings, when a community faces a utility-related shortage (such as sewer and water).

What is Interim Zoning? An ordinance that may be adopted on an emergency basis without notice to the public or public hearings, to adopt interim zoning regulations or change the land use designation or zoning classification of property, limiting the property to uses that will be compatible with a zoning proposal under consideration by the municipality. In a case decided prior to the adoption of the Growth Management Act, the Washington courts defined “interim zoning; as follows:

Interim zoning describes a process whereby a governmental body in response to an emergency situation temporarily establishes an ordinance to classify or regulate uses of land pending either revision of the existing zoning code or adoption of a final, comprehensive zoning plan.¹

¹ Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969); Mayer Built Homes, Inc. v. Town of Steilacoom, 17 Wash. App. 558, 564 P.2d 1170 (1977). See also, Byers v. Board of Clallam County Comm’rs., 84 Wn.2d 796, 801, 529 P.2d 823 (1974) (the court found that the County’s adoption of a detailed zoning ordinance which was 30 pages long, scheduled to be effective for 4 years, without a determination that there was an emergency requiring “interim zoning,” was not an interim zoning ordinance).
II. Authority and Exclusions – Permit Moratoria.

Cities and counties have statutory authority to impose permit moratoria and interim zoning for specific purposes. See, RCW 35.63.200; 35A.63.220; and for counties and cities planning under the Growth Management Act, RCW 36.70A.390. These statutes authorize a municipality to adopt a six-month moratorium or interim zoning without holding a public hearing. However, the public hearing must be held within sixty days after adoption, and if the moratorium or interim zoning is extended longer than six months, the process must be repeated. Here is the pertinent language from the statute:

A legislative body that adopts a moratorium or interim zoning ordinance, without holding a public hearing on the proposed moratorium or interim zoning ordinance, shall hold a public hearing on the adopted moratorium or interim zoning ordinance within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. The moratorium or interim zoning ordinance adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium or interim zoning ordinance may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

RCW 36.70A.390. Keep in mind that there are certain exclusions in RCW 36.70A.390 for municipalities planning under GMA.2

The Washington courts have ruled that neither RCW 35A.63.220 nor RCW 36.70A.390 authorize moratoria for shoreline management regulations under chapter 90.58 RCW (the Shoreline Management Act, “SMA”).3 However, there is a new statute, RCW 90.58.590, adopted specifically for shoreline moratoria. Whatever statute is used for the adoption of the moratorium, courts may not find “rolling” moratoria to be

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2 RCW 36.70A.390 does not apply to the designation of critical areas, agricultural lands, forest lands and mineral resource lands and the protection of these areas under RCW 36.70A.060 prior to such actions being taken in a comprehensive plan adopted under RCW 36.70A.070 and implementing development regulations adopted under RCW 36.70A.120, if a public hearing is held on such proposed actions. See, Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995) (“it is not that moratoriums and interim zoning controls cannot be imposed on resource lands, but rather that actions involving resource lands under RCW 36.70A.060 and .170 are not considered to be moratoriums or interim zoning controls for the purposes of RCW 36.70A.390.”)

"reasonable – the court invalidated an “unreasonable” shoreline moratorium (adopted prior to RCW 90.58.590) that was repeatedly re-enacted beyond the statutory period.4

The Forest Practices Act allows a municipality to deny permits for development on an individual piece of property for six years after the discovery of unpermitted logging. RCW 76.09.060.5 While this may be referred to as a “moratorium,” it is a procedure governed by the Forest Practices Act, and is not a “permit moratorium” governed by the statutes mentioned in this section. Furthermore, it applies to an individual piece of property, and the individual property owners are required to be given advance notice of the imposition of the moratorium.6

III. Authority – Public Facilities or Utility Moratoria.

A moratorium may also be imposed on an emergency basis without public notice or public hearings when a community faces a utility-related shortage (such as sewer and water).7 Because there are no procedures for the adoption of moratoria in the statutes relating to operation of municipal water and sewer systems, the most conservative course of action would be to follow the procedures set forth in the moratoria statutes.8

Concurrency ordinances are effective methods of keeping track of a municipality’s available water or capacity in its sewer system. As an alternative to the imposition of a moratorium that must be renewed every six months for a utility-related shortage, consider adoption of a concurrency ordinance. The concurrency ordinance would require an evaluation of the availability of water and/or sewer capacity for each application, and if the municipality had no water and/or sewer capacity, the application would be denied. The procedures in a concurrency ordinance allow an applicant to request approval of a development application if there is an acceptable alternative to the provision of water/sewer from the City’s system, and to appeal the decision.9 These features of a concurrency ordinance make it a good alternative solution to a blanket moratorium, which involves the risk of litigation and may be politically unpalatable.


5 Municipalities are required to adopt procedures for the implementation of the Forest Practices Act.


7 See, Covington Greens Associates v. Covington Water District, 931 F. Supp. 738 (W.D. Wash. 1996); see, RCW 35A.21.160, RCW 35.67.020, “every city has full jurisdiction and authority to manage, regulate and control” a system of sewerage. RCW 35.92.010, “a city or town may operate, construct waterworks, with full power to regulate and control the use and distribution of water, for all purposes, public and private.

8 For cities, RCW 35.63.200; 35A.63.220.

9 Some cities adopt moratoria with a provision allowing a “harshness variance,” which gives the legislative body the ability to grant individual exemptions from the moratorium. These variances can be problematic, if there are no standards to guide the use of discretion. It can also raise questions about the need for the moratorium – after all, if the city has adopted a moratorium because it has no sewer capacity to allow additional connections, the public may question the city’s decision to issue sewer hook-ups during the moratorium under the hardship variance.
The prohibition on development resulting from a moratorium may attract more litigation than the concurrency ordinance because the developers are usually left without an appeal process once the moratorium is adopted. Some municipalities have adopted a hardship variance or exception process allowing permits to issue during the moratorium, but these can invite equal protection challenges.

If the moratorium is adopted for a utility-related shortage, and there is no information to suggest when it might be lifted, the conservative approach is to limit the moratorium to the statutory six-month period and follow the statutory procedures for moratorium adoption. A public hearing should be held every six months (or one year with a work plan) on the moratorium, and the staff should present the legislative body with updated information regarding the status of the shortage. Information should be placed in the record to document the efforts made by the staff towards alleviating the shortage. Findings of fact supporting continuance of the moratorium should be adopted by the legislative body and entered into the record. Such documentation will be helpful in the event of a judicial challenge – moratoria are more likely to be validated by the courts if they are temporary, narrowly tailored to address the utility problem, involve good faith efforts toward expanding the utility service (capacity or water rights), are supported by comprehensive plan planning for the needed capital facilities and demonstrate consideration of the environment and planning goals.

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10 This is not to say that the moratorium itself cannot be appealed, but when it is acknowledged that the moratorium is justified, a property owner will not mount a useless appeal.
IV. ADOPTING A MORATORIUM

Step 1. Determine whether the moratorium is necessary.

Identify the purpose of the moratorium – what is the public problem? Next, identify the areas of the municipality the moratorium should cover. What general regulations or comprehensive plan amendments need to be adopted to address the problem? Does the municipality have authority to impose a moratorium for the intended purpose?

Not every amendment to the development regulations or comprehensive plan requires adoption of a moratorium. The permit moratorium preserves the status quo so that new plans and regulations will not be rendered moot by intervening development. For example, if the city does not have a planned unit development ordinance, and wishes to consider the feasibility of such an ordinance, a moratorium is not required to preserve the status quo. A moratorium is a drastic step and should not be undertaken lightly.

Step 2. The moratorium should be adopted on an emergency basis and effective immediately.

Even though state law authorizes immediate adoption of emergency moratoria, members of the public will complain, erroneously believing that adoption without advance notice or a public hearing is illegal or unconstitutional. This may lead some public officials to think that emergency adoption is not necessary. However, a municipality’s adoption of a moratorium will likely be an unusual event – and it will be newsworthy.

If the moratorium is adopted without an emergency clause, there is the possibility that developers may read about the moratorium in the newspaper, and submit development applications after adoption of the moratorium up to the date the moratorium ordinance is effective (usually 5 days after publication, in code cities). The applications submitted prior to the effective date must be processed in the same manner as all other applications. Depending on the number of applications received by the municipality, a “non-emergency” moratorium may not be required because all of the property potentially affected by the proposed regulations/comprehensive plan amendments could be included in the submitted applications.

Therefore, consider the risk involved – in most instances the emergency clause will be necessary. If there is any reticence to adopt a moratorium with an emergency clause, the legislative body can adopt the moratorium and set the date for the public hearing (to hear public testimony and deliberate whether to continue the moratorium) as soon as possible. (After adoption of the moratorium, the municipality must hold the public hearing within 60 days.\textsuperscript{11})

\textsuperscript{11} RCW 35.63.200, 35A.63.220, 36.70A.390.
**Initiative and Referendum:** Check the applicable statute or charter provision for your municipality. For example, ordinances of noncharter code cities which exercise the powers of initiative and referendum are not effective for 30 days after final passage, except those ordinances listed in RCW 35A.11.090, which include: "ordinances necessary for the immediate preservation of public peace, health and safety or for the support of city government and its existing public institutions which contain a statement or urgency and are passed by unanimous vote of the council."

**Step 3. Make sure the declaration of emergency in the ordinance accurately describes the need for immediate adoption of the moratorium.**

A legislative determination of an emergency is "conclusive and must be given effect unless it is on its face obviously false and a palpable attempt at dissimulation."

The ordinance must present sufficient facts on its face to justify the conclusion of an emergency.

**Step 4. Make sure the legislative body will pass the emergency moratorium when it is presented.**

Nothing prevents staff members from communicating directly with each city council member or county commission member individually to find out whether the officials believe that a moratorium should be imposed to address the identified public problem. The moratorium should not be discussed during open public meetings or hearings. Such discussions are usually reported in the local newspaper and could cause a rush to the planning department to submit project permit/development applications in order to vest under the existing regulations.

The municipal attorney or person preparing the ordinance should determine how many votes will be required for passage as an emergency measure. For example, here is the provision relating to the number of votes necessary for an emergency ordinance in non-charter code cities:

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of the public health, safety, public property or the public peace, may be made effective upon adoption.

RCW 35A.12.130. Check the state law, the municipal code and charter for emergency ordinance passage rules.

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Step 5. Don’t put the emergency moratorium ordinance on the legislative body’s agenda.

The staff should draft a moratorium ordinance\textsuperscript{13} for presentation at the next city council or county commissioners’ meeting. The moratorium ordinance should not be included in the meeting agenda – again, advance public notice of a moratorium could cause property owners to rush down to the planning department to submit development applications that could vest under the old regulations. The ordinance should be presented to the legislative body during the meeting.

Step 6. The legislative body can pass the moratorium ordinance on the day of presentation without any notice to the public or without allowing public testimony.

The legislative body does not need to engage in lengthy deliberations regarding the need for the moratorium during the meeting in which the ordinance is presented because a public hearing must be set for the purpose of taking public testimony. On the day of presentation of the moratorium ordinance, the legislative body needs to vote whether or not a moratorium should be imposed for the purposes described in the ordinance. If there are enough votes to pass the ordinance on an emergency basis (again, check the statutes applicable to the individual municipality, as well as charter and code provisions), then the legislative body should schedule the date for the public hearing, which must be within 60 days after adoption of the moratorium.

Step 7. The staff should prepare for the public hearing on the moratorium.

The clerk should immediately enter the date established by the legislative body for the public hearing on the municipality’s calendar. The clerk should be directed to provide public notice of the public hearing, as required by the municipality’s codes. Staff should prepare a presentation to the legislative body at the public hearing regarding the purpose of and need for the moratorium.

Step 8. Make sure you comply with SEPA.

The municipality’s SEPA Responsible Official must perform SEPA on the moratorium ordinance.\textsuperscript{14} This means that a SEPA Checklist must be completed. However, the threshold decision does not have to issue on the day of emergency moratorium adoption.

There is an exemption in WAC 197-11-880 for emergency actions, which provides:

Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to

\textsuperscript{13} Ordinance forms have been attached.

\textsuperscript{14} Master Builders Ass’n. v. City of Sammamish, CPSGMHB No. 05-3-0030, Order Segregating Case from the Consolidated Case and Final Decision and Order in Case No. 05-3-0027 (8-4-05).
public health and safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.

This would allow a municipality to adopt a moratorium ordinance on the day of its presentation to the legislative body without issuance of a threshold decision under SEPA. It does not allow a municipality to impose a moratorium for a period of six months or more without full compliance with SEPA. After adoption, the SEPA Responsible Official should comply with SEPA by issuing a threshold decision or by determining the moratorium categorically exempt.

The SEPA Responsible Official may find that a moratorium ordinance “relates solely to governmental procedures and contains no substantive standards respecting use or modification of the environment,” so it is categorically exempt under WAC 197-11-800(19). However, an action can be categorically exempt and still be subject to SEPA under WAC 197-11-305, so be sure to review this section carefully. In addition, SEPA should be complied with for each extension of the moratorium.

**Step 9. Comply with GMA in the adoption of a moratorium.**

The staff should provide a recommendation to the legislative body addressing the manner in which the moratorium addresses the GMA planning goals in RCW 36.70A.020 (if the municipality plans under GMA). The legislative body should consider these goals during its deliberations after the public hearing on the moratorium.

There is the possibility that the moratorium could be challenged as a “development regulation” adopted without adherence to the requirements of the state law.[15] If the municipality comprehensively reviews the planning goals of GMA at the time the moratorium is adopted (and each time it is extended) it will lessen the possibility of a finding by the GMA Board or a court that the moratorium violates GMA on this basis.

**Step 10. Comply with all public notice and hearing requirements at the subsequent public hearing on the moratorium.**

Notice must be provided of the public hearing. The legislative body opens the hearing for public testimony, and accepts testimony and comment from staff and the public on the adoption of the moratorium. The legislative body then closes the public testimony portion of the public hearing, and deliberates whether to continue the moratorium, or to change any aspect of it. Immediately after this public hearing, staff must develop findings of fact supporting the moratorium. These findings of fact should be incorporated into another ordinance, which is presented to the legislative body at the

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[15] See, Master Builders Ass’n v. City of Sammamish, CPSGMHB No. 05-3-0030, Order Segregating Case from the Consolidated Case and Final Decision and Order in Case No. 05-3-0027 (8-4-05).
next regular meeting. In the alternative, if the legislative body votes to dissolve the moratorium, an ordinance should be drafted to terminate the moratorium.

If the legislative body decides to include a work plan, the moratorium may be in effect for a year. Without a work plan, the moratorium will be in effect for not more than six months.

**Step 11. Immediately adopt findings of fact to support the moratorium.**

The legislative body must consider the ordinance with the moratorium findings of fact during its next regular meeting, or as soon thereafter as possible. If the moratorium has been adopted for a six month period, the legislative body should direct the clerk to schedule review of the moratorium at least three weeks prior to the anticipated termination date. This will ensure that the legislative body has enough time prior to the anticipated termination date to decide whether the moratorium should be extended (and to schedule another public hearing prior to the anticipated termination date) or whether the moratorium should be terminated.

**Step 12. Document the municipality’s activities taken pursuant to the moratorium.**

The staff, planning commission and legislative body should immediately take steps to perform the activities identified in the moratorium ordinance, so that the moratorium can be lifted as soon as possible. The progress or completion of each activity should be documented, in the event that there is a challenge to the moratorium. Progress should also be documented in the event that the legislative body decides to extend the moratorium – during the public hearing on the extension, the staff should detail everything that has been accomplished during the moratorium, what steps must still be taken, and how much time is needed for completion.

**Step 13. Once all work contemplated by the moratorium is complete, formally terminate the moratorium.**

After the municipality completes all of the work identified in the moratorium ordinances, the moratorium should be lifted. This should be done with another ordinance, to eliminate any confusion as to the exact date that applications may be accepted by the municipality for processing.
V. Judicial Challenges.

The United States Supreme Court has approved moratoria as an acceptable planning technique. However, this does not mean that all moratoria will sustain a legal challenge, or that a developer may not prevail on his/her damage claim for delays associated with a valid moratorium. The U.S. Supreme Court, in upholding a planning moratorium, still reiterated that a temporary takings analysis of the moratorium would involve a parcel-specific factual inquiry into the character and effect of the regulation. Therefore, several issues should be carefully analyzed before a moratorium is adopted.

First, consider the issue whether the moratorium is within the municipality's authority. While the courts have ruled that municipalities have broad power under the Washington State Constitution (art. 11, sec. 11,) to impose moratoria, not every moratorium will be upheld. For example, in Biggers v. Bainbridge Island, the Washington Supreme Court invalidated a shoreline moratorium it found to be "unreasonable" based on a number of factors, including: (1) the ordinance adopting the city's three-year "rolling" moratorium, stated that it was necessary to allow the city adequate time to update its Shoreline Master Program, although the relevant statutes didn't require such updating until 2011; (2) prior to the time the lawsuit was filed challenging the moratorium, "the City had years to make any required plan changes but did not do so;" (3) the moratorium was based on potential, rather than actual, demonstrated harm to shoreline habitat; (4) after adoption, the first extension changed the scope of the moratorium to remove an exemption for normal maintenance, normal repairs or emergency repairs, thereby "suspending the application process [which] private property owners to bear the costs associated with the denial of process (including property erosion and economic loss)."

The Biggers case demonstrates that the municipality should re-evaluate the need for a moratorium every time the moratorium is extended. As stated in the Biggers dissent:

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17 Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002); First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987). Keep in mind that there may be a different analysis for utility related moratoria. See, Lockary v. Kayetz, 587 F. Supp. 631 (N.D. Cal. 1984) (12 year water hookup moratorium states taking cause of action), subsequent proceedings, 908 F.2d 543 (9th Cir. 1990) (water hookup not a taking if due to water shortage thereby precluding summary judgment), superseded, 917 F.2d 1150 (9th Cir. 1990) (unless it denies viable economic use, no confiscation by enactment of restriction; facial challenge rejected, may be illegal discrimination.); Kawaoka v. City of Arroyo Grande, 17 F.3d 1227 (9th Cir. 1994) (temporary water moratorium valid as meets rational basis test and even if it lasts a year it is a reasonable time.)
19 Id., 169 P.3d at 18.
A reasonable moratorium may be a valid exercise of a municipality’s power as such an exercise of power may give the city time to create a comprehensive plan. . . . But a reasonable moratorium must be in place no longer than necessary to accomplish the necessary planning by a body exercising diligence to accomplish that planning. Then, the moratorium must be removed.\textsuperscript{20}

As shown above, the likelihood of a challenge to a moratorium increases in direct relation to the length of time that the moratorium is in place. Although the statutes authorizing moratoria for zoning ordinances do not place restrictions on the number of times a moratorium may be renewed, this does not mean that it may be renewed indefinitely.

Be aware of the requirement in the zoning moratoria statutes for the adoption of a work plan if the moratorium is to be in place for one year, as opposed to six months. A year-long moratorium is acceptable as long as the municipality has identified the steps in the process for lifting the moratorium, and established dates for accomplishing these steps within the year. If the municipality has adopted a six month moratorium without a work plan, and the legislative body intends to extend the moratorium, consider the conservative approach to another six-month extension, and develop a work plan to be consistent with the statute.

Another consequence of repeated renewals of a moratorium is a determination by a court or the GMA Board that it is actually a zoning ordinance, not a moratorium.\textsuperscript{21} A finding that it is a zoning ordinance would mean that the moratorium was invalid because it was not adopted as required by law (with the required public notice and public hearing(s)).\textsuperscript{22}

In one pre-GMA case, a County adopted an “interim zoning ordinance” to be effective for four years.\textsuperscript{23} It was challenged, and the court held that “interim zoning ordinances” are meant to be temporary, stop-gap measures, so a zoning ordinance that was proposed to be in place for four years should have been adopted under the procedures in the Planning Enabling Act.\textsuperscript{24}

One more issue to consider prior to imposing a moratorium is the vested rights doctrine. The Washington courts have determined that a municipality’s adoption of a moratorium does not violate the vested rights doctrine.\textsuperscript{25} However, this ruling applies to the adoption of the moratorium and the bar it places on a developer’s ability to vest under the zoning and land use controls in existence prior to adoption. It does not apply to the situation where complete applications have been submitted to the municipality for

\textsuperscript{20} Biggers, 162 Wn.2d at 688, 169 P.3d at 26.
\textsuperscript{21} Master Builders Ass’n v. Sammamish, CPSGHMB No. 05-2-0030c, Order Segregating Case No. 05-3-0027 from the Consolidated Case and Final Decision and Order in Case No. 05-3-0027, August 3, 2005.
\textsuperscript{22} RCW 35.63.100, RCW 35A.63.070, RCW 36.70A.140.
\textsuperscript{23} Byers v. Board of Clallam County Commissioners, 84 Wn.2d 796, 529 P.2d 823 (1974).
\textsuperscript{24} RCW 35.63.100, RCW 35A.63.070.
processing, prior to the adoption of the moratorium. Careful attention should be paid to
the drafting of the moratorium ordinance to exempt those applications that are subject to
the vested rights doctrine, in order to eliminate any unnecessary legal challenges. 26

IV. Frequently Asked Questions.

1. Should the moratorium be adopted by resolution or ordinance? Some cities
and counties have adopted moratoria by resolution because a resolution is effective
immediately upon passage. However, this procedure is not recommended for the
following reasons:

   (a) Resolutions are used to express policy, while an ordinance is used to
       adopt enforceable law. There is no reason to risk a challenge to the moratorium or the
       enforceability of the moratorium based on form rather than substance.

   (b) An ordinance may be effective immediately upon adoption, as long as
certain statutory (and perhaps code and/or charter) procedures are observed. (For
example, see, RCW 35A.12.130 for code cities, which requires specific findings, a
   certain number of affirmative votes of the whole membership of the council, etc.) The
   Washington courts have upheld emergency clauses in ordinances. 27

2. How long should the moratorium be? A moratorium authorized under RCW
35.63.200, 35A.63.220 and 36.70A.390 may be initially imposed for not longer than six
months. (A moratorium can be imposed for up to a year if a work plan is developed.)
The moratorium may be renewed for additional six-month periods, as long as the
requirements of the statute are followed for each adoption. While the statute does not
impose a limit on the number of six-month extensions that can be adopted, this should not
be interpreted as authority to a municipality to renew the moratorium indefinitely (to stop
growth or prevent a particular type of development).

The most important issue to consider when determining the length of the
moratorium is the purpose. If the purpose of the moratorium is to adopt new
development regulations, the steps below should be considered. Once the new
development regulations have been adopted, the moratorium should be terminated.
Consider the following when establishing the length of the moratorium:

   a. If the municipality is planning under the Growth Management Act, and
      is considering the adoption of new/amendments to the comprehensive plan and/or
      development regulations, the municipality must notify the Washington State Department
      of Community, Trade and Economic Development at least 60 days prior to final

26 See, WCHS, Inc. v. Lynnwood, 120 Wn. App. 668, 86 P.3d 1169 (2004). Although the city in this case
adopted an interim zoning ordinance, not a moratorium, the consequences to a municipality imposing a
moratorium would be the same. If complete applications have been submitted to the municipality, and
these applications are subject to the vested rights doctrine, the municipality cannot adopt a moratorium to
frustrate the development.

adoption with statement of the underlying emergent facts upheld).
adoption. RCW 36.70A.106. Therefore, the moratorium should be adopted for a period longer than 60 days if the amendments have not yet been drafted. (Keep in mind that there is a procedure in RCW 36.70A.106(3)(b) allowing a city or county to request expedited review for “permanent” changes to a development regulation.)

b. The moratorium itself is subject to the State Environmental Policy Act ("SEPA"). 28 While the initial moratorium ordinance could be adopted without notice to the public or without a public hearing (under WAC 197-11-880), SEPA review of the moratorium should be performed after adoption. A SEPA checklist should be prepared and a threshold determination made prior to the public hearing (which is required within 60 days after adoption of the moratorium).

c. The draft ordinance amending the comprehensive plan/development regulations (that will be developed during the moratorium) must be reviewed under the State Environmental Policy Act, unless it is exempt from SEPA. 29

d. The draft ordinance amending the comprehensive plan/development regulations must be considered (usually) by the planning commission in a public hearing, and there may be more than one hearing, depending on the complexity or public interest in the subject matter. Notice must be provided of all of these public hearings. RCW 36.70A.035.

e. The staff may need time to physically transcribe the planning commission’s recommendation to the council/commissioners.

f. After the city council or county commissioners receive the recommendation and draft ordinance, they may decide to make changes, which would necessitate another hearing (if the public has not had an opportunity to review and comment on the changes). See, RCW 36.70A.035(2).

3. We need to adopt a moratorium for a utility-related shortage, but we have no information to suggest when it might be lifted in the near future. Can the moratorium be adopted indefinitely? The best course of action is to follow the procedures established by statute. 30 This may mean that the municipality will have to renew the moratorium for six month periods and hold additional hearings. During this time, the municipality’s staff should be updating the legislative body at each hearing as to the utility’s progress in lifting the moratorium. For example, during a hearing on the continuation of a water moratorium, the staff could inform the legislative body of the status of Department of Ecology’s processing of the municipality’s water rights application. It may be that the municipality does not expect to be able to lift the moratorium for two years, but

28 Master Builders Ass’n v. City of Sammamish, CPSGMHB No. 05-3-0030, Order Segregating Case from the Consolidated Case and Final Decision and Order in Case No. 05-3-0027 (8-4-05).
29 To determine whether the ordinance is exempt from SEPA, review WAC 197-11-800 and chapter 43.21C RCW – as well as the city or county’s SEPA chapter. If the new ordinance involves substantive standards affecting use or modification of the environment, the ordinance will not be categorically exempt. WAC 197-11-800(19).
30 For cities, RCW 35.63.200.
reviewing the facts supporting the moratorium every six months keeps the legislative body and the public up to date on the progress of the staff’s work towards termination. This also builds the administrative record on the moratorium that will be necessary if a challenge is filed.

4. Is a moratorium really necessary? For example, if the staff is aware that the municipality has no more water, can’t the staff simply reject new development applications, and explain this situation to the individual property owners? No. Staff members are required to follow code procedures and are not authorized to reject development applications unless a moratorium is in place. The legislative body should receive information on a timely basis on the status of all utility services (and traffic concurrency), and if there are problems, the staff should let the legislative body know as soon as possible. The legislative body must make the decision to adopt a moratorium.

Keep in mind that adoption of a moratorium is a legislative act. The municipal officials have immunity from liability for their legislative acts. RCW 4.24.470; Bogan v. Scott Harris, 523 U.S. 44, 118 S.Ct. 966, 140 L.Ed.2d 79 (1998). Action by the staff in rejecting applications without an authorizing moratorium could subject the municipality and individual staff members to liability.

5. How do we decide which permit applications are subject to the moratorium? There are two major issues to consider. First, the moratorium should be crafted so that it covers those types of permit applications that would affect the status quo – not all project permit or development applications in the city. Second, the city should exempt the vested applications from the moratorium.

Applications that affect the status quo: If the purpose of the moratorium is to amend the city’s planned unit development regulations, and the city only allows planned unit developments in certain zoning districts, then the moratorium should be imposed on applications for planned unit developments in the zoning districts where they are allowed. The moratorium should not be broader than needed to address the problem.

If a moratorium has been imposed because the city’s water system cannot provide any additional water hook-ups, the moratorium should be imposed on all hook-ups and development applications for which the applicant is requesting a water hook-up or a recommendation that the city’s water system can provide water for a particular development. There are many situations in which a city is only one of a number of water purveyors within city limits, so the moratorium only needs to address the applications within the City’s water service area.

Keep in mind that certain types of applications, like a preliminary plat application, requires a recommendation from the “local health department or other agency furnishing sewage disposal or providing water as to the adequacy of the proposed means of sewage disposal and water supply.” RCW 58.17.150. This recommendation must be provided prior to the public hearing on the preliminary plat application, so that written findings can be made whether the proposed subdivision makes appropriate provisions for potable
water supplies and sanitary wastes. RCW 58.17.110. If a recommendation has issued stating that the city has adequate water or sewer, that recommendation should not be modified or affected by the moratorium. See, RCW 58.17.150(3).

Vested Applications. Under the Washington vested rights doctrine, once a developer submits a complete application for a permit, the municipality cannot frustrate the development by enacting new regulations for use in reviewing the application. A vested right does not guarantee a developer the right to build. It merely establishes the ordinances to which the permit and subsequent development must comply. The application is then “vested” to the building and land use control ordinances in place at the time a complete application is submitted, so long as that permit is subject to the vested rights doctrine and the permit issues.

If the municipality enacts a moratorium, those permit applications that are vested should not be subject to the moratorium, because the vested rights doctrine requires that the municipality review the application under the building and land use control ordinances in place at the time the complete application was submitted. Keep in mind that if a municipality subjects the vested applications to the moratorium, it will only have the effect of delaying issuance of the final decision – it will not change the regulations under which the application must be reviewed. If the final decision on a project permit application is delayed, the municipality could be subject to damages under RCW 64.40.020.

Therefore, the moratorium ordinance should exempt all vested applications. This includes the applications that were complete prior to the adoption of the moratorium ordinance, regardless of the date of issuance of the Notice of Complete Application.

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31 Not all permits are subject to the vested rights doctrine. Some of the permit applications that will vest under state law and case law are: (1) building permits, RCW 19.27.095(1); (2) preliminary plats, RCW 58.17.033(1); (3) short plats, Noble Manor v. Pierce County, 133 Wn.2d 269, 943 P.2d 1378 (1997); shoreline substantial development permits, Tabot v. Grey, 11 Wn. App. 807, 525 P.2d 801 (1974); conditional use permits, Beach v. Board of Adjustment, 73 Wn.2d 343, 438 P.2d 617 (1968). The municipality may also adopt code provisions to allow other types of permits to vest. Erickson v. McLellan, 123 Wn.2d 864, 872 P.2d 1090 (1994).
34 See, WCHS, Inc. v. City of Lynnwood, 120 Wash. App. 668, 86 P.3d 1169 (2004). In this case, a property owner submitted a complete building permit application to the city. The city subsequently adopted an interim zoning ordinance prohibiting the use identified in the building permit, in an attempt to block the development. Even though the elements of a complete building permit application are identified in state law and the city’s code (as required by RCW 36.70B.080), the city argued that the building permit application was not complete, and therefore subject to the interim zoning ordinance. The court reversed the city, and allowed the development to proceed because it had vested prior to the adoption of the interim zoning ordinance.
SAMPLE ORDINANCES

The following ordinances are examples of the ordinances your municipality may use to adopt a moratorium, adopt findings of fact to support a moratorium after the public hearing and to terminate the moratorium.

Ordinance for adoption of a moratorium without notice to the public (planning):

ORDINANCE NO. 965

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING AN IMMEDIATE EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT WITHIN THE HEIGHT RESTRICTION AREA AS SHOWN ON THE OFFICIAL HEIGHT RESTRICTION MAP, UNTIL THE CITY FINISHES THE PROCESS OF CODE REVIEW AND AMENDMENT RELATING TO BUILDING SIZE LIMITATIONS, SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

WHEREAS, the City Council of the City of Gig Harbor commissioned a report from an independent consultant on the issue of building size limitations; and

WHEREAS, after the report was issued, the City Council decided to hold public hearings and workshops to obtain testimony and evidence from the public on the issue of building sizes, especially in the height restriction area of the City; and
WHEREAS, while the workshops were underway, the City Council decided that the issue of building size limitations should be addressed while a moratorium is in place, to prevent any property owners from submitting applications for development or re-development under the existing codes; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications as long as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to impose an immediate six-month moratorium on the acceptance of development applications for any “development activity” or “development permit” as defined in Gig Harbor Municipal Code Section 19.14.010(24) and (26), for any property within the height restriction area of the City, unless the development is actually a remodel of an existing structure and will not increase the size of the existing structure; Now, therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. “Exempt Development Permits” shall include all of the following permit applications for “development” or “development activity” defined in GHMC Section 19.14.010(24) and 19.14.010(26), a copy of which is attached to this Ordinance as Exhibit B, which:
1. are not subject to any other moratorium in the City;

2. were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance;

3. propose development or a development activity on property located outside the City height restriction area (see, Subsection B below); and

4. are project(s) located on publicly owned property and which building(s) do not exceed one thousand (1,000) square feet in size.

"Exempt development permits" shall also include any permits meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will not increase the size of the existing structure in footprint, height, bulk and scale.

B. "Non-Exempt Development Permits" shall include any permits or permit applications for any "development activity" as defined in GHMC Section 19.14.010(24) and 19.14.010(26) proposed to take place on property located within the City's height restriction area, submitted after the effective date of this Ordinance. Any permits meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance, are also "non-exempt development permits." The "height restriction area" is that area shown on the City’s official height restriction area map, as adopted in GHMC Section 17.62.020, a copy of which is attached to this Ordinance as Exhibit A.
Section 2. Purpose. The purpose of this moratorium is to allow the City to continue the process of analyzing the issue of building size limitations without the possibility that developers will flood the City with applications for development under the existing codes. The City Council is currently engaged in a workshop process to determine whether building size limitations should be imposed in Gig Harbor, and if so, on which area(s) of the City. Additional time is needed to fully explore the options available to the City.

Section 3. Moratorium Imposed. The City Council hereby imposes an immediate six-month moratorium on the acceptance of all non-exempt development permit applications for development activities on property located within the height restriction area, as shown in the map attached hereto as Exhibit A. All such non-exempt applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.

Section 4. Duration of Moratorium. The moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the City holds a public hearing on the moratorium and adopts findings and conclusions in support of the moratorium (as contemplated by Section 5 herein), the moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to
terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this moratorium within sixty (60) days of its adoption, or before September 10, 2004. The Council shall hold this hearing on August 9, 2004. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this moratorium and either justify its continued imposition or cancel the moratorium.

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. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate moratorium on the City’s acceptance of non-exempt development applications for property, such applications could become vested, leading to development that could be incompatible with the codes eventually adopted by the City. Therefore, the moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to vest
rights for an indefinite period of time. This Ordinance does not affect any existing vested rights, nor will it prohibit all development in the City, because those property owners with exempt applications/permits, those with previously obtained approvals for development or redevelopment of the type identified as "exempt" may proceed with processing and development, as the case may be.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 12th day of July, 2004.

CITY OF GIG HARBOR

Mayor Pro Tem, Jim Franich

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney
Exhibit "A"

Height Restriction Area
Exhibit "A"

Gig Harbor Municipal Code

Chapter 19.14

CONCURRENCY AND IMPACT FEE PROGRAM DEFINITIONS


24. "Development activity" or "development" means any construction or expansion of a building, structure, or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the city.

26. "Development permit" or "project permit" means any land use permit required by the city for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site specific rezones, and, for purposes of the city's concurrency ordinance, shall include applications for amendments to the city's comprehensive plan which request an increase in the extent or density of development on the subject property.
SUMMARY OF ORDINANCE NO. 965
of the City of Gig Harbor, Washington

On July 12, 2004 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. 965, the summary of text of which is as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING AN IMMEDIATE EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT WITHIN THE HEIGHT RESTRICTION AREA AS SHOWN ON THE OFFICIAL HEIGHT RESTRICTION MAP, UNTIL THE CITY FINISHES THE PROCESS OF CODE REVIEW AND AMENDMENT RELATING TO BUILDING SIZE LIMITATIONS, SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of July 12, 2004.

BY: ____________________________
MOLLY M. TOWSLEE, CITY CLERK
Sample Moratorium Ordinance (utility-related):

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ___, WASHINGTON, RELATING TO SEWERS AND SEWER SERVICE, ADOPTING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR SEWER SERVICE CONNECTIONS, DEVELOPMENT APPLICATIONS REQUIRING A DETERMINATION OF SEWER SERVICE AVAILABILITY FOR APPROVAL, AND AGREEMENTS FOR SEWER SERVICE SERVICE OUTSIDE THE CITY LIMITS, WHICH MORATORIUM WILL BE EFFECTIVE FOR A PERIOD OF SIX MONTHS, ESTABLISHING A DATE FOR THE PUBLIC HEARING ON THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF THE MORATORIUM.

WHEREAS, the City of ________ may adopt an immediate moratorium for a period of up to six months, as long as it holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220; RCW 35.63.200; RCW 35.67.020); and

WHEREAS, the Washington State Department of Ecology has required that the City impose an immediate moratorium on new sewer connections until certain activities have been accomplished; and

WHEREAS, the City cannot identify the exact date that such activities will be accomplished, so the moratorium must also cover development applications for which sewer availability is required as a condition of approval; and

WHEREAS, the City Council desires to impose an immediate moratorium on the acceptance of sewer service connections, both inside and outside City limits, agreements for sewer service outside city limits, as well as all
development applications for which sewer availability is required as a condition of approval, in order to comply with DOE’s mandate to the City; and

WHEREAS, the City’s SEPA Responsible Official has determined that this ordinance must be adopted on an emergency basis under WAC 197-11-880 (but will comply with SEPA within the next 60 days); and

[for municipalities planning under GMA] WHEREAS, pursuant to RCW 36.70A.106, the City has forwarded a copy of this Moratorium Ordinance to the Washington State Department of Trade and Community Development; and

WHEREAS, a moratorium on the acceptance of the applications identified above is needed to comply with the Agreed Order executed by the City and the Department of Ecology on ________________, 2005 (attached hereto as Exhibit A); and

WHEREAS, the City Council considered this ordinance during the Council’s regular meeting of ________________, 2005; Now, therefore,

THE CITY COUNCIL OF THE CITY OF __________, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. Non-Exempt Applications: any application for sewer service/sewer hook-up, if such application has not received approval or a sewer service connection from the City on or before the date of the adoption of this Moratorium Ordinance and agreements for sewer service outside city limits. In addition, non-exempt applications shall include any project permit application for which sewer
availability is required as a condition of approval, if a complete application has not been submitted to the City on or before the date of the adoption of this Moratorium Ordinance, or, if a complete application has been submitted, such application has not received a written recommendation for the Public Works Director based on a finding that sewer service is available for the property identified in the application on or before the date of adoption of this Moratorium Ordinance.

B. Exempt Applications: any application for sewer service or sewer hook-up that has been paid for and was ready to issue on or before the date this Moratorium Ordinance was adopted. In addition, exempt applications shall include any project permit application that was determined complete on the date of the adoption of this Moratorium Ordinance as long as the Public Works Director has issued a written recommendation for approval based on the availability of sewer for the property identified in the application, and such recommendation issued on or before the adoption of this Moratorium Ordinance.

Section 2. Purpose. The purpose of this Moratorium is to allow the City adequate time to complete the activities required by the Department of Ecology in the Agreed Order, attached hereto and incorporated herein by this reference as Exhibit A. These activities must be performed during a moratorium on the acceptance of applications for new sewer service/hook-ups, applications for sewer outside city limits, or applications requiring recommendations of approval based on sewer availability in order to comply with the Agreed Order and to
ensure that developers in the City do not construct homes, buildings and other structures requiring sewer during a time when sewer is not available.

Section 3. Moratorium Imposed. The City Council hereby imposes a moratorium on the acceptance of all non-exempt applications, as defined in this Moratorium Ordinance. All such non-exempt applications shall be rejected and returned to the applicant.

Section 4. Duration of Moratorium. The Moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the City holds a public hearing on the Moratorium and adopts findings and conclusions in support of the Moratorium (as contemplated by Section 5 herein), the Moratorium shall not terminate until six (6) months after the date of adoption of this Ordinance, or at the time all of the tasks described in the Agreed Order have been accomplished, whichever is sooner; PROVIDED THAT: the City Council shall make the decision to terminate the Moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 35.63.200 and 35A.63.220, the City Council shall hold a public hearing on this Moratorium within sixty (60) days after its adoption, or on ________________, 2005. At the following City Council meeting, the City Council shall adopt findings of fact by ordinance, and either justify its continued imposition or terminate the Moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or
unconstitutionality of any other section, sentence, clause or phrase of this
Ordinance.

Section 7. Declaration of Emergency. The City Council hereby declares
that an emergency exists necessitating that this Ordinance take effect
immediately after passage by a majority vote plus one of the whole membership
of the Council, and that the same is not subject to a referendum (RCW
35A.12.130 (for code cities)). The facts pertinent to this moratorium are set forth
in the Agreed Order, attached hereto as Exhibit A. The Department of Ecology
has prohibited the City from issuing any additional sewer service connections,
and the City is required to adopt the moratorium in order to comply with DOE’s
mandate, or face monetary penalties. This Ordinance does not affect any
existing vested rights, nor will it prohibit all development in the City, because the
property owners with existing sewer service connections or other approvals for
which sewer availability has been committed will be allowed to hook-up to the
City’s sewer system, as set forth in the Agreed Order.

Section 8. Publication. This Ordinance will be published by an approved
summary consisting of the title.

Section 9. Effective Date. This Ordinance has been passed by a majority
plus one vote of the whole membership of the City Council, and shall take effect
and be in force immediately upon passage.

PASSED by the __________ City Council and the Mayor of the City of
___________ on this ___ day of __________, 2005.

CITY OF ________________
SUMMARY OF ORDINANCE NO. ___

Of the City of _________________, Washington

On _________________, 2005, the City Council of the City of _________________, Washington, approved Ordinance No. ___ the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _________________, WASHINGTON, RELATING TO SEWERS AND SEWER SERVICE, ADOPTING AN IMMEDIATE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR SEWER SERVICE CONNECTIONS, DEVELOPMENT APPLICATIONS REQUIRING A DETERMINATION OF SEWER SERVICE AVAILABILITY FOR APPROVAL, AND AGREEMENTS FOR SEWER SERVICE OUTSIDE THE CITY LIMITS, WHICH MORATORIUM WILL BE EFFECTIVE FOR A PERIOD OF SIX MONTHS, ESTABLISHING A DATE FOR THE PUBLIC HEARING ON THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF THE MORATORIUM.

The full text of this Ordinance will be mailed on request.
APPROVED BY the City Council at their meeting of

____________________, 2005.

City Clerk ____________________
Ordinance adopting findings of fact to support the moratorium (planning):

ORDINANCE NO. 968

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE ADOPTION OF FINDINGS AND CONCLUSIONS TO SUPPORT AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT WITHIN THE HEIGHT RESTRICTION AREA AS SHOWN ON THE OFFICIAL HEIGHT RESTRICTION MAP, UNTIL THE CITY FINISHES THE PROCESS OF CODE REVIEW AND AMENDMENT RELATING TO BUILDING SIZE LIMITATIONS, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, AND CONFIRMING THE MAINTENANCE OF THE MORATORIUM FOR SIX MONTHS AFTER INITIAL IMPOSITION AS THE EFFECTIVE PERIOD.

WHEREAS, the City Council of the City of Gig Harbor may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications and utility extension agreements, as long as the City Council holds a public hearing on the proposed moratorium within sixty (60) days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, on July 12, 2004, the Gig Harbor City Council passed Ordinance No. 965 imposing an immediate moratorium on the acceptance of acceptance of applications for new development or certain types of re-development within the height restriction area as shown on the official height restriction map; and

WHEREAS, the City held a public hearing on the moratorium on August 9, 2004, which was continued until August 23, 2004; and
WHEREAS, the City Council desires to enter findings and conclusions in support of the continued maintenance of the moratorium for a period of six months after the adoption of the moratorium (which would be on or about January 12, 2005); Now, Therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. "Exempt Development Permits" shall include all of the following permit applications for "development" or "development activity" defined in GHMC Section 19.14.010(24) and 19.14.010(26), a copy of which is attached to this Ordinance as Exhibit B, which:

1. are not subject to any other moratorium in the City;
2. were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance;
3. propose development or a development activity on property located outside the City height restriction area (see, Subsection B below);
and
4. are project(s) located on publicly owned property and which building(s) do not exceed one thousand (1,000) square feet in size
5. include demolition permits, sign permits, and marinas without upland buildings;
6. are building permits associated with development applications which were determined complete by City staff before the effective date of this Ordinance; and

7. are which projects in which building(s) do not exceed 3,500 square feet in size

"Exempt development permits" shall also include any permits meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will not increase the size of the existing structure in footprint, height, bulk and scale.

B. "Non-Exempt Development Permits" shall include any permits or permit applications for any "development activity" as defined in GHMC Section 19.14.010(24) and 19.14.010(26) proposed to take place on property located within the City's height restriction area, submitted after the effective date of this Ordinance. Any permits meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance, are also "non-exempt development permits." The "height restriction area" is that area shown on the City's official height restriction area map, as adopted in GHMC Section 17.62.020, a copy of which is attached to this Ordinance as Exhibit A.

Section 2. Purpose. The purpose of this moratorium is to allow the City adequate time to hold additional workshops, public hearings and meetings on the possibility of adopting regulations which limit building size in the Height
Restriction Zone (attached as Exhibit A hereto, and incorporated herein by this reference).


A. John P. Vodopich, AICP, City of Gig Harbor Community Development Director, provided the chronology of events and background for the Council's consideration of building size limitations. Mr. Vodopich explained that the Council has been interested in this issue since April 2001, and that there have been at least ten related meetings and hearings. On August 11, 2003, the City commissioned a consultant to prepare a report on whether the City should adopt limitations on building size. This report issued on January 12, 2004, and was considered in three Planning Commission/City Council meetings/hearings. After a review of the report, the City Council decided to hold work-study sessions to determine whether building sizes should be limited in the City, and if so, where. These work-study sessions were held on June 1, June 7, June 21, July 6, and July 19, 2004. On June 21, 2004, the City Council decided that the height restriction area was the most vulnerable to new development that would be incompatible with the type of regulations considered during the work-study sessions, and directed the City staff to draft a moratorium ordinance.

On July 12, 2004, the ordinance was presented to the City Council as an emergency measure, and the Council passed it as Ordinance No. 965, to be
effective immediately. A hearing was scheduled on Ordinance No. 965, to take place on August 9, 2004.

On August 9, 2004, the Council held the public hearing. No members of the public asked to speak on the issue. A letter was received from an attorney, Traci Shallbetter, dated August 4, 2004, stating that there were “serious concerns” with Ordinance 965. Ms. Shallbetter would not identify her clients.

The City Council decided to continue the public hearing until August 23, 2004, and directed the City staff to draft findings and conclusions to support the maintenance of the moratorium, consistent with the Council’s comments at the last workshop session.

B. At the August 23, 2004 public hearing, Steve Osguthorpe, Planning & Building Manager provided the Council with a copy of an e-mail from Mr. Jim Sullivan expressing concern the demolition of structures was not included in the list of proposed exemptions.

C. At the August 23, 2004 public hearing, Dawn Sadler testified that she agreed with the intent of the moratorium but voiced concern that she would not be able to remodel her home.

D. At the August 23, 2004 public hearing, Doug Sorensen testified that the Council needed to consider the intent of the moratorium.

E. After this testimony and staff reports, the City Council discussed the need for the moratorium. First, the Council stated that the workshop sessions on the subject of building size had confirmed their belief that many residents were concerned about the size of structures that could be built under the City’s existing
regulations. Residents are concerned because of recent development that was permitted under the existing regulations, including the City’s Design Review Manual. Many were under the impression that the City’s Design Review Manual would have more of an impact in the regulation of height, bulk and scale with regard to new development, but were unhappy with certain new structures. The Council identified the height restriction zone as an area that is vulnerable to massively-sized structures because the height of structures is limited there. It is important to ensure that these low structures are proportionately constructed, which is a difficult task, given that the value of property in the area has increased, and property owners would like to ensure that they can develop their properties to the fullest extent possible.

The City is currently updating the Design Review Manual, and it may be that some of the concerns can be addressed in the amendments to the Manual. However, there is no way to know until the City performs the full analysis, which involves two Council work-study sessions on the subject of the Design Review Manual.

The City Council then directed staff to bring the proposed Ordinance back for further consideration with the inclusion of demolition permits in the list of exemptions as well as a nan allowance for structures under a certain size.

The County Council considered the revised Ordinance at the September 13, 2004 meeting. At that meeting, Doug Sorenson testified that he opposed the Ordinance but supported a single-family residence exemption. Dawn Sadler
submitted a letter from her Attorney, Carolyn A. Lake dated September 13, 2004. Susan Harms testified that the Council should consider special circumstances.

The City Council determined to maintain the moratorium imposed by Ordinance No. 965 for the six-month period allowed by state law, based on the above facts. The Council included an exemption for projects with structures less than 3,500 square feet in size. The Council concluded that maintenance of the moratorium was required for the public health, safety and welfare, given that the majority of the persons testifying at the Building Size Analysis work-study sessions were in favor of building size limitations, and without a moratorium, there was a risk that development applications for the type of development not favored by the public could become vested under the existing codes and constructed, thereby thwarting the efforts of the Council.

Section 4. Moratorium Maintained. A moratorium shall be maintained on the acceptance of all non-exempt development permit applications for property inside and outside the City limits for six months, which began on the date of adoption of Ordinance No. 965. The City Council hereby directs the City Clerk to schedule consideration of the moratorium prior to the expiration of this moratorium. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. 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 6. 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.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor, this 13th day of September, 2004.

________________________________________
MAYOR Gretchen A. Wilbert

ATTEST/AUTHENTICATED:

________________________________________
Molly Towslee, City Clerk

APPROVED AS TO FORM:

________________________________________
Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 8/18/04
PASSED BY THE CITY COUNCIL: 9/13/04
PUBLISHED: 9/22/04
EFFECTIVE DATE: 9/27/04
ORDINANCE NO.: 968
Chapter 19.14
CONCURRENCY AND IMPACT FEE PROGRAM DEFINITIONS


24. “Development activity” or “development” means any construction or expansion of a building, structure, or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the city.

26. “Development permit” or “project permit” means any land use permit required by the city for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site specific rezones, and, for purposes of the city’s concurrency ordinance, shall include applications for amendments to the city’s comprehensive plan which request an increase in the extent or density of development on the subject property.
Ordinance adopting findings of fact for moratorium (utility-related):

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ___, WASHINGTON, RELATING TO SEWERS AND SEWER SERVICE, ADOPTING FINDINGS OF FACT TO JUSTIFY THE CONTINUED MAINTENANCE OF THE MORATORIUM IMPOSED UNDER ORDINANCE NO. ___, ON THE ACCEPTANCE OF NON-EXEMPT APPLICATIONS, WHICH MORATORIUM SHALL BE EFFECTIVE FOR A PERIOD OF SIX MONTHS, ESTABLISHING A DATE FOR RECONSIDERATION OF THE MAINTENANCE OF THE MORATORIUM.

WHEREAS, on ________________, 2005, the __________ City Council passed Ordinance No. ___, which declared an emergency necessitating the immediate imposition of a Moratorium on the acceptance of non-exempt applications; and

WHEREAS, RCW 35A.63.220 (and RCW 35.63.200) provides that if the City Council does not hold a public hearing prior to the adoption of a moratorium, the City Council shall hold such hearing within sixty days after adoption of the moratorium; and

WHEREAS, on ________________, 2005, the City SEPA Responsible Official determined that the Moratorium is exempt from SEPA under WAC 197-11-800(19), however, the activities that the City is required to perform with regard to the sewage treatment plant upgrade (as described in the Agreed Order between the City and DOE) shall not be exempt, but the City may proceed with the exempt moratorium pursuant to WAC 197-11-305 and WAC 197-11-070; and
WHEREAS, on __________, 2005, the City Council held a public hearing on the Moratorium, and on that date, accepted testimony from all members of the public desiring to be heard on the subject; and

WHEREAS, on ____________, 2005, the City Council considered these Findings of Fact, deliberated on the issue whether to maintain the moratorium, and voted to continue the moratorium as described in Ordinance No. ___; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF __________, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purpose of this Ordinance, the definitions in Ordinance No. ___ are hereby adopted by reference as if fully set forth herein.

Section 2. Adoption of Findings of Fact. As required by RCW 35A.63.200 (or RCW 35.63.220), the City Council hereby adopts the following findings of fact to support the continued imposition of the City’s six (6) month moratorium on the acceptance of Non-Exempt Applications.

A. Staff Report. During the public hearing, the City’s Public Works Director testified that the City operated its sewage treatment plant under a National Pollution Discharge Elimination System (“NPDES”) permit, which is issued by the Washington State Department of Ecology. The City’s sewage treatment plant was built in the 1970’s and built to handle flows from 3300 residents. However, the City has discovered problems with the system of pipes leading to the treatment plant. Specifically, the pipes are not water-tight, and rain
and ground water seeps into the pipes, causing additional, unplanned flows at the sewage treatment plant.

In addition, the flow from many of the privately owned side sewers connecting with the City's sewer lines transported storm water drainage as well as sanitary sewage. City Public Works personnel were able to trace the storm water drainage by the use of dye markers, and confirmed that the water in City residents' gutters flowed into the sewer system by means of the side sewer connection on individual lots.

The sewage treatment plant was not designed to handle storm water drainage, ground water seepage and sanitary sewer flows. As a result, the flows from the City's sewage treatment plant have exceeded the flow limit in the NPDES permit from the DOE.

DOE informed the City that if it singed an Agreed Order imposing a moratorium on new sewer hook-ups and performed other related compliance activities, it would not take additional enforcement action or imposed penalties on the City for the discharge violations of the NPDES permit (prior to the date of the Agreed Order). On __________, 2005, the City Council of _________ authorized the Mayor to sign and the Mayor did sign the Agreed Order, imposing a sewer moratorium on new sewer hook-ups to the City's sewage treatment plant. A copy of the Agreed Order between the City and DOE is attached as Exhibit A to Ordinance No. ___.

B. Authorization for City's Actions. DOE has specific authorization to enter into the Agreed Order in lieu of additional enforcement action against the
City, as cited in the Order. The City has authority to impose a moratorium under RCW 35A.63.220 and RCW 35.67.020.

C. Testimony from the Public: Two members of the public testified.

1. ____________, attorney for developer ____________, P.O. Box ___, __________, WA. Mr. _________ stated that his client plans to submit at least five preliminary plat applications to the City. He believed that the subdivision process was frustrated by the moratorium. Mr. ________ asserted that while the City has advised the public that there is a problem with the sewage treatment plant, the public has to take the City’s word for the fact that there is a problem. He does not believe that it is in the public interest to impose a moratorium. Finally, Mr. ________ asked the City Council to consider the City’s liability based on a moratorium, and that six months was too long.

2. ____________, developer, P.O. Box ___, __________, WA. Mr. ________ asked the City Council to consider the fact that he has a capital investment of about 8 million dollars in property within the City. He stated that he has obligations relative to this financial interest, because the money did not come out of his back pocket. As a result, he must meet his obligations, regardless of whether or not there is a moratorium. He urged the City Council to investigate the issue thoroughly, and determine whether there is a way to solve this problem without a moratorium.

D. Deliberations by Mayor and Council. The Mayor responded to the public testimony by stating that he has attended the meetings held between the DOE and the City on the needed upgrade to the City’s sewage treatment plant,
so he knows that the need for the moratorium is real. In addition, the Mayor asked Mr. ____ to submit any ideas he had regarding alternatives to the moratorium to the City for consideration. The Mayor stated that the documents relating to the moratorium and the City's sewage treatment plant are in the public library, and the public is welcome to review them.

Individual Council members reiterated the fact that the moratorium was imposed by DOE as a sanction, in lieu of further enforcement action. The Council did not believe that it would be in the public's interest to refuse to impose the moratorium demanded by DOE.

D. **Need to Preserve the Status Quo.** While the City is working on a solution to the problem with the sewage treatment plant, it cannot issue additional approvals and permits for hook-ups to the sewer system. If the City did not impose a moratorium, the City might continue to violate the NPDES permit, resulting in additional enforcement action from DOE.

F. **Moratorium to be Maintained for Six Months.** In light of the above, the City Council desires to maintain the moratorium imposed by Ordinance No. ____ for a period of six months. This moratorium shall apply to all non-exempt applications, regardless of whether the property is within or outside the City limits.

G. **Duration of Moratorium.** The moratorium imposed by Ordinance ____ commenced on the effective date of that Ordinance. The moratorium shall terminate six months thereafter. The City Council shall make the decision to
terminate by ordinance and termination shall not otherwise be presumed to have occurred.

H. Additional Public Hearing. The City Council believes that the activities described in the Agreed Order will not be accomplished within a six (6) month period. Therefore, the City Council directs the City Clerk to provide public notice of and to schedule a public hearing on ________________, 200_, [this date needs to be at least three weeks prior to expiration of the moratorium on ____________, 200_]. At this public hearing, the City Council will take public testimony and decide whether to extend the moratorium.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or unconstitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Publication. This Ordinance will be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall take effect and be in full force five days after publication of the approved summary.

PASSED by the ___________ City Council and the Mayor of the City of ___________ on this ___ day of ___________, 2005.

CITY OF ______________________

____________________________

MAYOR ______________________
SUMMARY OF ORDINANCE NO. ___
Of the City of __________________, Washington

On __________________, 2005, the City Council of the City of
good. Washington, approved Ordinance No. ____ the main points of
which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ___,
WASHINGTON, RELATING TO SEwers AND SEWER
SERVICE, ADOPTING FINDINGS OF FACT TO JUSTIFY THE
CONTINUED MAINTENANCE OF THE MORATORIUM IMPOSED
UNDER ORDINANCE NO. ___, ON THE ACCEPTANCE OF NON-
EXEMPT APPLICATIONS, WHICH MORATORIUM SHALL BE
EFFECTIVE FOR A PERIOD OF SIX MONTHS, ESTABLISHING
A DATE FOR RECONSIDERATION OF THE MAINTENANCE OF
THE MORATORIUM.

The full text of this Ordinance will be mailed on request.

APPROVED BY the City Council at their meeting of
_______________, 2005.

________________________
City Clerk
ORDINANCE NO. 989


WHEREAS, on July 12, 2004, the Gig Harbor City Council passed Ordinance No. 965, imposing an immediate moratorium on the acceptance of applications for new development or certain types of re-development within the height restriction area as shown on the official height restriction map; and

WHEREAS, Ordinance No. 965 defined the permit applications that were exempt from the moratorium; and

WHEREAS, on September 13, 2004, the City Council passed Ordinance No. 968, which adopted findings and conclusions supporting the continued maintenance of the moratorium; and

WHEREAS, Ordinance 968 included definitions of the permit applications that were exempt from the moratorium; and

WHEREAS, Ordinance 979 further defined the exempt permit applications, amending Ordinances 965 and 968; and

WHEREAS, the City has made substantial progress in addressing the issues of the moratorium during the time that the moratorium has been in place,
including amendments to the City's Design Manual that, in part, (a) impose additional height limits on non-residential structures within the historic district portion of the view basin, (b) limit the use of tall vegetation in addressing buffering issues in the view basin, and (c) eliminate the allowance for additional height on primary structures in the view basin. Additionally, the City's Community Development Committee has met regularly to determine what additional standards should be imposed to address the concerns expressed by citizens during the public meeting on the building size issue that were not addressed in the Design Manual update, and has directed the staff to complete the drafting of text amendments specified by the Committee; and

WHEREAS, an outline of the Community Development Committee's proposed amendments was presented to the City Council on January 10, 2004; and

WHEREAS, additional time is needed to both allow planning commission and public review of the proposed text amendments and also to allow a 60-day review of the amendments by State agencies pursuant to RCW 36.70A.106; and

WHEREAS, RCW 36.70A.390 allows the City to extend a moratorium for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal; and

WHEREAS, because the moratorium was set to expire on January 12, 2005, the City Council considered the issue whether the moratorium should be extended for an additional 90-day period during its regular Council meeting on January 10, 2005; and
WHEREAS, the Council passed ordinance No. 986 on January 10, 2005 extending the moratorium for an additional 90 days; and

WHEREAS, the City held a public hearing on the moratorium extension on February 14, 2005 pursuant to RCW 36.70A.390 and RCW 35A.63.220; and

WHEREAS, the City Council desires to enter findings and conclusions in support of the continued maintenance of the moratorium for a period of 90 days after the adoption of the moratorium (which would be on April 11, 2005); Now, Therefore,

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

Section 1. Findings and Conclusions in Support of Moratorium. The City Council finds as follows:

1. The City of Gig Harbor is characterized by views of Gig Harbor bay and the small scale buildings that reflect the historic development of the harbor basin.

2. The City of Gig Harbor’s Comprehensive Plan has the stated goal to “Preserve the character of those sites or districts which reflect the style of Gig Harbor’s historical development” (Goal 3.13); and

3. The City of Gig Harbor’s Comprehensive Plan has the stated objectives to:
   a. Develop guidelines which promote compatible development within designated areas. (Objective 3.13.2);
   b. Consider standards which encourage building forms consistent with historic designs, (e.g., massing, roof styles and scale,” (Objective 3.14.2); and
   c. Define and retain “small town” characteristics of historic business districts. (Objective 3.15.1).

4. The City of Gig Harbor’s Comprehensive Plan has the stated goal to “Control vegetation to preserve significant views” (Goal 3.18).
5. Large structures recently built in the non-residential zones within the harbor basin have adversely impacted the visual quality of the harbor basin because of their scale in relation to the historic structures that characterize the harbor basin.

6. The City has made substantial progress in addressing the issues of the moratorium during the time that the moratorium has been in place, including amendments to the City’s Design Manual that, in part, (a) impose additional height limits on non-residential structures within the historic district portion of the view basin, (b) limit the use of tall vegetation in addressing buffering issues in the view basin, and (c) eliminate the allowance for additional height on primary structures in the view basin. Additionally, the City’s Community Development Committee has met regularly to determine what additional standards should be imposed to address the concerns expressed by citizens during the public meeting on the building size issue that were not addressed in the Design Manual update, and has drafted recommendations to the City Council on ways to further address public concerns.

7. The City Council has proposed amendments that are intended to protect views of the water from specified public viewing corridors and to maintain the small scale structures that characterize the City’s historic district.

8. Additional time is required to process and adopt the proposed text amendments.

Section 2. Moratorium Maintained. The moratorium adopted under Ordinance 968 on the acceptance of all non-exempt development permit applications for property located in the City’s Height Restriction Area shall be maintained for the full period described in Ordinance 986, which is April 12, 2005.

Section 3. Work Plan. During the period of the moratorium the following work plan shall apply:

<table>
<thead>
<tr>
<th>Deadline</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>January 24, 2005</td>
<td>Finalization of text amendment ordinance. (Done)</td>
</tr>
<tr>
<td>January 27, 2005</td>
<td>SEPA threshold decision on text amendment ordinance. (Done)</td>
</tr>
<tr>
<td></td>
<td>Transmittal of text amendment ordinance to DCTED. (Done)</td>
</tr>
</tbody>
</table>
March 3, 2005  Public hearing before the Planning Commission on text amendment ordinance
March 17, 2005  Recommendation of Planning Commission to City Council on text amendment ordinance
March 28, 2005  City Council consideration of text amendment ordinance
April 11, 2005  Final Council action on text amendment ordinance

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be unconstitutional or invalid 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 5. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 6. 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.
PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor this 28th day of February, 2005.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: __________________________
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: __________________________
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING: 2/10/05
DATE PASSED: 2/28/05
DATE OF PUBLICATION: 3/9/05
EFFECTIVE DATE: 3/14/05
Ordinance terminating moratorium.

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ____, WASHINGTON, RELATING TO LAND USE AND ZONING, TERMINATING AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT IN THE BUSINESS AND COMMERCIAL ZONING DISTRICTS (B-1, B-2, C-1 AND C-2), AS ADOPTED IN ORDINANCE NO. ___.

WHEREAS, on _____________, 2004, the ________ City Council passed Ordinance No. ____, imposing an immediate moratorium on the acceptance of non-exempt applications for new development or certain types of re-development within the B-1, B-2, C-1 and C-2 zoning districts, as shown on the Official Zoning Map of the City; and

WHEREAS, Ordinance No. _____ defined the permit applications that were exempt and non-exempt from the moratorium; and

WHEREAS, Ordinance No. __ detailed the problem of _____________, which caused the City Council to make a determination that the City should consider the adoption of new development regulations or amendment of existing development regulations to be applicable within these zoning districts; and

WHEREAS, on _____________, 2004, the City Council passed Ordinance No. ____, which adopted findings and conclusions supporting the continued maintenance of the moratorium for a period of 6 months; and
WHEREAS, the purpose of the emergency moratorium was to allow the development of draft regulations to address the problems identified during the public hearings held by the Planning Commission on the issue; and

WHEREAS, on ______________, 2004, the SEPA Responsible Official issued a threshold decision of ______________ on a draft ordinance to be forwarded to the Planning Commission for consideration; and

WHEREAS, on ______________, 2004, the draft ordinance was forwarded to the Washington State Department of Community Development, as required by RCW 36.70A.106; and

WHEREAS, the Planning Commission held a public hearing on the draft development regulations designed to address the problem of ______________, and the Commission’s recommendation on a draft ordinance was forwarded to the City Council; and

WHEREAS, on ____, 2005, after a public hearing, the City Council reviewed the draft ordinance incorporating the code revisions proposed by the Planning Commission; and

WHEREAS, on ____, 2005, the City Council adopted Ordinance ____, adopting new development regulations to address the identified problem; and

WHEREAS, the moratorium imposed by the City in the above-referenced ordinances is not terminated until the City Council terminates the moratorium by formal action; Now, therefore,

THE CITY COUNCIL OF THE CITY OF ______________, WASHINGTON, ORDAINS AS FOLLOWS:
Section 1. The City Council hereby terminates the moratorium imposed by Ordinance _____ and Ordinance ____, which adopted the findings of fact and conclusions supporting continuation of the moratorium.

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

Section 3. 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.

PASSED by the __________ City Council and the Mayor of the City of __________ on this ___ day of _________, 2005.

CITY OF ______________________

______________________________
MAYOR _______________________

ATTEST/AUTHENTICATED:

By: ____________________________
______________________________, City Clerk

APPROVED AS TO FORM:

By: ____________________________
Carol A. Morris, City Attorney

FIRST READING: __/__/05
DATE PASSED: __/__/05
SUMMARY OF ORDINANCE NO. __
Of the City of ________________, Washington

On ________________, 2005, the City Council of the City of ________________, Washington, approved Ordinance No. ____ the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ________________, WASHINGTON, RELATING TO LAND USE AND ZONING, TERMINATING AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT IN THE BUSINESS AND COMMERCIAL ZONING DISTRICTS (B-1, B-2, C-1 AND C-2), AS ADOPTED IN ORDINANCE NO. ____.

The full text of this Ordinance will be mailed on request.

APPROVED BY the City Council at their meeting of ________________, 2005.

City Clerk ______________________