

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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ITEM NO: A-2

DATE: March 13, 2008

SUBJECT: Authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium

CONTACT PERSON: Deborah Knight, City Administrator *D. Knight*

**ISSUE:**

The issue before the City Council is to authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal Code 16.28.250 through 16.28.390, and 16.28.470, planned unit developments under Sultan Municipal Code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10; and annexations under any method.

Attachment A is the revised draft moratorium for Council consideration. Attachment B is a red-lined version that shows changes from the original draft moratorium before Council on February 28, 2008.

The revised draft clarifies the situations where the moratorium would not apply, and makes the moratorium effective immediately upon adoption – with a corresponding declaration of emergency.

**STAFF RECOMMENDATION:**

Authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal Code 16.28.250 through 16.28.390, and 16.28.470, planned unit developments under Sultan Municipal Code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10; and annexations under any method.

## SUMMARY:

The Central Puget Sound Growth Management Hearings Board (Board) considered Fallgatter V, Fallgatter VIII, and Fallgatter IX, and found the City of Sultan's Capital Facilities Plan (CFP) and Transportation Improvement Plan (TIP) **noncompliant** with the Growth Management Act (GMA) and **invalid**. The Board also found the City noncompliant with the GMA for failing to complete its review and update of development regulations required by RCW 36.70A.130(1)(b).

A determination of invalidity means that the TIP and CFP cannot be used to determine concurrency under the Growth Management Act. Since the City's development regulations (SMC 16.108.030) require that the City issue certificates of concurrency before certain developments such as PUDs and Subdivisions can be approved, the City has been in a **de facto** moratorium since the City received the Board's order in Fallgatter IX on September 6, 2007.

The difference between a moratorium and invalidity without moratorium is that under a moratorium, the City may not accept certain development applications as defined in the ordinance. Under invalidity without a moratorium, the City may accept applications and process those applications to the point where a certificates of concurrency is required for approval, but the City cannot approve those applications.

At a Compliance Hearing on February 7, 2008, the Board instructed the City to advise the Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a **valid** CFP.

The City Council reviewed the Board's instructions to the City at its meeting on February 14, 2008 and directed staff to return with an adopting ordinance for consideration at its February 28, 2008 meeting. The City Council discussed an adopting ordinance and chose to delay action until March 13, 2008 when all City Council members could be present.

The Master Builders Association submitted a comment letter dated February 26, 2008. A copy of the letter is included as Attachment C. Several citizens commented orally on February 28, 2008.

### Proposed Moratorium

Because the TIP and CFP are determined to be invalid, the proposed moratorium is city-wide rather than site specific.

The proposed moratorium is limited to those development applications where the City is required to issue certificates of concurrency, rezones and annexations. The

moratorium is intended to address the Board's concerns to prevent vesting of development applications in the absence of a valid CFP.

The revised proposed moratorium includes a new section - Section 6 an emergency clause to allow the moratorium to take effect immediately upon passage. In *Matson v. Clark County*, the Court of Appeals specifically identified prevention of a "rush to vest" as a legitimate basis for use of an emergency effective date.

As of the effective date, the community development director will not be able to accept and the City will not be able to process applications for:

1. Subdivisions under SMC 16.28.250 through 16.28.390 and 16.28.470
2. Planned unit developments under SMC 16.10
3. Rezones under SMC 21.10
4. Annexations under any method

This moratorium would not apply to applications for short subdivisions (4 or less lots) under Sultan Municipal Code (SMC) 16.28.010 through 16.28.240.

This moratorium would not apply to:

1. Applications for development that vested before September 6, 2007 (the date the City received the Board's order), including related construction permits for those vested applications;
2. Applications for development that do not require a certificate of concurrency for approval.

The moratorium would not apply to applications for those permits identified in the Growth Management Act at RCW 36.70A.302(3)(b), as set out below:

3. Permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before September 6, 2007.
4. A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before September 6, 2007.
5. A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before September 6, 2007.

A public hearing would be held not later than six months following the date of adoption by the Council, to consider the moratorium imposed, to determine whether to continue the moratorium, modify it or rescind it, and at which time, if the moratorium is continued or modified, to adopt findings of fact justifying the Council's decision.

It is the intent of the Council to lift this moratorium at such time as the Board rescinds its determination of invalidity. Unless modified or rescinded as a result of the public hearing, the moratorium will be effective for a period of six months from the effective date of the Ordinance.

#### DISCUSSION:

##### New applications

Absent a moratorium, there is no basis for the City to refuse to accept new applications. However, under the City Code, applications subject to concurrency (i.e. PUD Applications, Subdivisions, etc.) cannot be approved without a certificate of concurrency per SMC 16.108.030.

Absent a moratorium, the City would need to inform applicants that, because of the invalid CFP, the City cannot issue certificates of concurrency, therefore any application that requires concurrency cannot be approved until the City has a valid CFP.

Applicants can:

- Wait to submit an application until the City has a valid CFP
- Submit an application and waive the 120-day approval timeline
- Submit an application and risk denial of the application on day 120 because the City can't issue a certificate of concurrency.

##### Existing, vested applications

The City currently has three applications that have **vested** that may be affected by a moratorium:

1. Harris – commercial development
2. Grandview – planned unit development on Sultan Basin Road
3. Sky Valley Automotive -

**Vested** means that the application is found to be substantially complete by the City or that the City did not respond with comments within the 28 day time period required by state law.

They can be processed as far as possible, but if they don't already have a certificate of concurrency, they cannot be approved.

### Building Permits

Applications for building permits based on a previously-approved subdivision or site plans are not affected by the proposed moratorium.

### FISCAL IMPACT:

The fiscal impact to the City could be serious. The City funds staff in the Community Development Department based on a certain number of anticipated land use applications.

The 2008 budget is built on an estimated 33 single family residences (SFR). City staff recommend adopting a conservative budget of \$54,500 in 2008 to avoid overestimating revenues.

There is a short-fall in the adopted Building Department budget. Anticipated Building permit expenses (\$95,280) will exceed anticipated Building Permit and Plan Check fees by approximately \$20,780. The difference is made up from other general fund sources such as property taxes. Other funds affected by the moratorium may include:

1. Hearing examiner fees (8 x \$1,500 = \$12,000) are offset by hearing examiner expenses (\$12,000) in the Planning and Development budget. This is a pass-through cost to the applicants.
2. \$55,00 in zoning and subdivision fees
3. \$20,000 in plan check fees

A moratorium also has the affect of dampening developer interest. Implementing a moratorium increases risk for developers since the length of the moratorium may be unknown. Especially in today's housing market, the City is unlikely to attract large new development to the Sultan community. Developers who have projects completed, but have not attracted builders may find it more difficult to market their properties. On the other hand, developers also desire the certainty provided by a valid CFP.

### ALTERNATIVES:

1. Authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium on certain developments.

2. Do not authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium on certain developments.
3. Direct staff to areas of concern.

**RECOMMENDED ACTION:**

Authorize the Mayor to sign Ordinance No. 981-08 imposing a moratorium on the acceptance of and processing of applications for subdivisions under Sultan Municipal Code 16.28.250 through 16.28.390, and 16.28.470, planned unit developments under Sultan Municipal Code chapter 16.10, rezones under Sultan Municipal Code chapter 21.10; and annexations under any method.

**ATTACHMENTS:**

- A – Ordinance No. 981-08
  - B – Ordinance No. 981-08 (mark-up version)
  - C – Master Builders Comment Letter 02-26-08
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**COUNCIL ACTION:**

**DATE:**

CITY OF SULTAN  
Sultan, Washington

ORDINANCE NO. 981-08

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON IMPOSING A MORATORIUM ON THE ACCEPTANCE OF AND PROCESSING OF APPLICATIONS FOR SUBDIVISIONS UNDER SMC 16.28.250 THROUGH 16.28.390, AND 16.28.470, PLANNED UNIT DEVELOPMENTS UNDER SMC CHAPTER 16.10, REZONES UNDER SMC CHAPTER 21.10; AND ANNEXATIONS UNDER ANY METHOD.

WHEREAS, RCW 36.70A.390, 35A.63.220, and other lawful authority give the Sultan City Council ("Council") the authority to enact moratoria; and

WHEREAS, the Central Puget Sound Growth Management Hearings Board (the "Board") has considered Case No. 06-3-0003 (*Fallgatter V*), Case No. 06-3-0034 (*Fallgatter VIII*), and 07-3-0017 (*Fallgatter IX*), and found the City of Sultan's Capital Facilities Plan ("CFP") and Transportation Improvement Plan ("TIP") noncompliant with the Growth Management Act ("GMA") and invalid, and also found the City noncompliant with the GMA for failing to complete its review and update of development regulations required by RCW 36.70A.130(1)(b); and

WHEREAS, the City received the Board's Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007; and

WHEREAS, at a Compliance Hearing on February 7, 2008, the Board instructed the City to advise the Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP; and

WHEREAS, it is necessary, in order to preserve the public health, safety, and welfare of City residents, and the City budget, to prevent certain development approvals in the City until the appropriate planning and legislative action can be completed in accordance with the Board's Orders; and

WHEREAS, it is the intent of the Council to lift this moratorium at such time as the Board rescinds its determination of invalidity;

NOW, THEREFORE, it is ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. Moratorium imposed. A moratorium is hereby imposed. From and after the first day after the effective date of this Ordinance, the planning director shall not accept and the City shall not process applications for subdivisions under SMC 16.28.250 through 16.28.390 and 16.28.470, for planned unit developments under SMC 16.10; for rezones under SMC 21.10; and for annexations under any method.

Section 2. Clarification of Nonapplicability. This moratorium does not apply to:

(a) applications for short subdivisions under SMC 16.28.010 through 16.28.240;

(b) applications for those permits identified in the Growth Management Act at RCW 36.70A.302(3)(b), as set out below:

- (i) permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before September 6, 2007, except as otherwise specifically provided in the board's order to protect the public health and safety;
- (ii) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before September 6, 2007; and
- (iii) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before September 6, 2007;

(c) applications for development that vested before September 6, 2007, including related construction permits for those vested applications;

(d) applications for development that do not require a certificate of concurrency for approval.

Section 3. Duration. A public hearing shall be held not later than six months following the date of adoption by the Council, to consider the moratorium imposed and to determine whether to continue the moratorium, modify it or rescind it, and at which time, if the moratorium is continued or modified, to adopt findings of fact justifying the Council's decision. Unless continued, modified, or rescinded as a result of the public hearing, this moratorium shall be effective for a period of six months from the effective date of this Ordinance.

Section 4. Severability. If any section, sentence, clause, phrase, or other portion or provision of this Ordinance or its application to any person or project is, for any reason, declared invalid, illegal or unconstitutional in whole or in part by any court or agency of competent

jurisdiction, the balance of this Ordinance shall be unaffected and shall remain in full force and effect.

Section 5. Effective date. The City Council hereby finds and declares that an emergency exists which necessitates that this Ordinance become effective immediately in order to preserve the public welfare and to prevent the potential for vesting of development for which capital facilities may not be provided.

Section 6. Declaration of emergency. The City Council hereby declares for the public interest, safety and welfare reasons set forth above, that an emergency exists necessitating that this Ordinance take effect immediately upon its passage.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

By \_\_\_\_\_  
CAROLYN ESLICK, Mayor

ATTEST:

By \_\_\_\_\_  
LAURA KOENIG, City Clerk

Approved as to form:

By \_\_\_\_\_  
Kathy Hardy, City Attorney

Published: \_\_\_\_\_, 2008

CITY OF SULTAN  
Sultan, Washington

ORDINANCE NO. 981-08

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON IMPOSING A MORATORIUM ON THE ACCEPTANCE OF AND PROCESSING OF APPLICATIONS FOR SUBDIVISIONS UNDER SMC 16.28.250 THROUGH 16.28.390, AND 16.28.470, PLANNED UNIT DEVELOPMENTS UNDER SMC CHAPTER 16.10, REZONES UNDER SMC CHAPTER 21.10; AND ANNEXATIONS UNDER ANY METHOD.

WHEREAS, RCW 36.70A.390, 35A.63.220, and other lawful authority give the Sultan City Council ("Council") the authority to enact moratoria; and

WHEREAS, the Central Puget Sound Growth Management Hearings Board (the "Board") has considered Case No. 06-3-0003 (*Fallgatter V*), Case No. 06-3-0034 (*Fallgatter VIII*), and 07-3-0017 (*Fallgatter IX*), and found the City of Sultan's Capital Facilities Plan ("CFP") and Transportation Improvement Plan ("TIP") noncompliant with the Growth Management Act ("GMA") and invalid, and also found the City noncompliant with the GMA for failing to complete its review and update of development regulations required by RCW 36.70A.130(1)(b); and

WHEREAS, the City received the Board's Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007; and

WHEREAS, at a Compliance Hearing on February 7, 2008, the Board instructed the City to advise the Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP; and

WHEREAS, it is necessary, in order to preserve the public health, safety, and welfare of City residents, and the City budget, to prevent certain development approvals in the City until the appropriate planning and legislative action can be completed in accordance with the Board's Orders; and

WHEREAS, it is the intent of the Council to lift this moratorium at such time as the Board rescinds its determination of invalidity;

NOW, THEREFORE, it is ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. Moratorium imposed. A moratorium is hereby imposed. From and after the first day after the effective date of this Ordinance, the planning director shall not accept and the City shall not process applications for subdivisions under SMC 16.28.250 through 16.28.390 and 16.28.470, for planned unit developments under SMC 16.10; for rezones under SMC 21.10; and for annexations under any method. ~~Unless modified or rescinded as a result of the public hearing required by Section 3 of this Ordinance, this moratorium shall be effective for a period of six months from the effective date of this Ordinance.~~

Section 2. Clarification of Nonapplicability. This moratorium does not apply to:

(a) applications for short subdivisions under SMC 16.28.010 through 16.28.240;

(b), or to applications for those permits identified in the Growth Management Act at RCW 36.70A.302(3)(b), as set out below:

- (iv) permit for construction by any owner, lessee, or contract purchaser of a single-family residence for his or her own use or for the use of his or her family on a lot existing before ~~receipt by the county or city of the board's order~~September 6, 2007, except as otherwise specifically provided in the board's order to protect the public health and safety;
- (v) A building permit and related construction permits for remodeling, tenant improvements, or expansion of an existing structure on a lot existing before ~~receipt of the board's order by the county or city~~September 6, 2007; and
- (vi) A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before ~~receipt of the board's order by the county or city~~September 6, 2007;

(c) applications for development that vested before September 6, 2007, including related construction permits for those vested applications;

(d) applications for development that do not require a certificate of concurrency for approval.

Section 3. Duration. A public hearing shall be held not later than six months following the date of adoption by the Council, to consider the moratorium imposed, ~~and to determine whether to continue the moratorium, modify it or rescind it, and at which time, if the moratorium is continued or modified, to adopt findings of fact justifying the Council's decision.~~ Unless continued, modified, or rescinded as a result of the public hearing, this moratorium shall be effective for a period of six months from the effective date of this Ordinance.

~~Section 4. Effect on projects in the development process. This moratorium shall not affect proposals for which a complete application has been received by the City prior to the effective date of this Ordinance.~~

Section ~~5~~4. Severability. If any section, sentence, clause, phrase, or other portion or provision of this Ordinance or its application to any person or project is, for any reason, declared invalid, illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, the balance of this Ordinance shall be unaffected and shall remain in full force and effect.

Section 5. Effective date. The City Council hereby finds and declares that an emergency exists which necessitates that this Ordinance become effective immediately in order to preserve the public welfare and to prevent the potential for vesting of development for which capital facilities may not be provided.

Section 6. ~~Effective date~~ Declaration of emergency. ~~This Ordinance shall take effect on~~  
~~\_\_\_\_\_~~, 2008 at 5:00 p.m.. The City Council hereby declares for the public interest, safety and  
welfare reasons set forth above, that an emergency exists necessitating that this Ordinance take effect  
immediately upon its passage.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2008.

By \_\_\_\_\_  
CAROLYN ESLICK, Mayor

ATTEST:

By \_\_\_\_\_  
LAURA KOENIG, City Clerk

Approved as to form:

By \_\_\_\_\_  
Kathy Hardy, City Attorney

Published: \_\_\_\_\_, 2008



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425.646.5985 www.masterbuildersinfo.com

February 26, 2008

City Council  
City of Sultan  
319 Main Street  
Sultan, WA 98294

Dear Councilmembers,

On behalf of the more than 4,500 member companies of the Master Builders Association of King and Snohomish Counties (MBA), I am writing to comment on the proposed city-wide moratorium on subdivisions, planned unit developments, rezones and annexations.

This is a unique circumstance in which a moratorium may not be needed. Conversely, a moratorium might actually make sense, given the deficiencies in the Capital Facilities Plan (CFP) that have been identified by the Central Puget Sound Growth Management Hearings Board.

We urge the Council to seek assistance from Snohomish County to address the current deficiencies in the CFP. The City should also seek assistance from other stakeholders that can aid in the development of a compliant CFP. Our association staff and members are willing to assist the City with this effort in order to complete the plan in a timely manner.

We encourage the City to act quickly on this matter. If the City does enact a moratorium, we urge the Council to keep it as short as possible. During deliberations, the Council should take into consideration the level of commitment and resources available to address these issues as quickly as possible.

Please feel free to contact me if you would like assistance from our association.

Sincerely,

Jennifer Jerabek  
South Snohomish County Manager

*sent via electronic mail*