

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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**ITEM:** A-3

**DATE:** March 27, 2008

**SUBJECT:** Resolution No. 08-11 Amending Council Procedures to incorporate Quasi-judicial Hearing Procedures

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

**ISSUE**

The issue before the City Council is to authorize the Mayor to sign Resolution No. 08-11 (Attachment A) amending section 6, public hearing procedures, of the council meeting procedures adopted by resolution 07-05 to add a new section 6.4 relating quasi-judicial closed record hearings procedures.

**STAFF RECOMMENDATION**

Authorize the Mayor to sign Resolution No. 08-11 amending Section 6, Public Hearing Procedures, of the Council meeting procedures adopted by resolution 07-05.

**SUMMARY**

The City Council discussed amending procedures for taking public comment during quasi-judicial closed record hearings at its Council Retreat on February 9, 2008 and at its Council meeting on March 13, 2008. Following the discussion on March 13, 2008, the City Council directed staff to change its procedures to not allow public comment during a closed record hearing.

City staff propose amending Section 6, Public Hearing Procedures, of the document entitled "City of Sultan Council Meeting Procedures" to add procedures for quasi-judicial closed record hearings. The City Council adopted these procedures by Resolution 07-11 on April 12, 2007.

**BACKGROUND**

Open and Closed Record Hearings

Under the city's process land use applications first go to the Hearing Examiner for an open record hearing. The Hearing Examiner then makes a recommendation to the City Council that either recommends approval, approval

with conditions, or denial of the application. The Hearing Examiner can also deny with prejudice which means the applicant cannot apply with the same project under the same circumstances.

The City Council holds a quasi-judicial closed record hearing where it can accept the recommendation, reject the recommendation, or remand the application back to the Hearing Examiner for further proceedings.

The City's process is somewhat confusing because Sultan Municipal Code 2.26.140 and 2.26.150 which describes the Hearing Examiner and appeal process was not amended following Regulatory Reform in 1995

Under Regulatory Reform, all cities and counties (GMA and non-GMA) must have established a project permit process to do the following ([RCW 36.70B.050](#)):

1. Combine SEPA review process with process for review of project permit applications (see above), and
2. Provide for no more than one open record hearing and one closed record appeal on a project permit application.

*What is an open record hearing?*

It is the traditional public hearing in which testimony, evidence, and other information (reports, studies, etc.) is presented, where the record for the decision on the project permit is developed. It may be held prior to the decision on the project permit or it may be held on an appeal (such as from an administrative decision). ([RCW 36.70B.020\(3\)](#))

*What is a closed record hearing?*

It is a proceeding (typically this would be before the legislative body) held after an open record hearing on a project permit application. No, or only limited, new evidence or information may be presented (the record is closed). Basically, all that can be presented would be oral argument based on the record. ([RCW 36.70B.020\(1\)](#))

## **DISCUSSION**

The City Council can decide the amount and timing of public comment during a quasit-judicial closed record hearing. The desire to allow public comment needs to be weighed against state law as defined by the Land Use Petition Act and the need to ensure that the process is not compromised by public comments. The Council has a range of options. The following options were the starting point for the Council's discussion:

1. Allow all members of the public present at the meeting to comment

2. Allow only "parties of record" to comment
3. Do not allow public comment during a quasi-judicial closed record hearing

After discussing each option and weighing the pros and cons, the City Council determined to not allow public comment during quasi-judicial closed record hearings.

#### **RECOMMENDED ACTION**

**Authorize the Mayor to sign Resolution No. 08-11 amending Section 6, Public Hearing Procedures, of the Council meeting procedures adopted by resolution 07-05 (Attachment A).**

#### **ATTACHMENTS**

A – Resolution No. 08-11

**CITY OF SULTAN  
SULTAN, WASHINGTON**

**RESOLUTION 08-11**

**A RESOLUTION OF THE CITY OF SULTAN, WASHINGTON  
AMENDING SECTION 6, PUBLIC HEARING PROCEDURES,  
OF THE COUNCIL MEETING PROCEDURES ADOPTED BY  
RESOLUTION 07-05 TO ADD A NEW SECTION 6.4  
RELATING QUASI-JUDICIAL CLOSED RECORD  
HEARINGS PROCEDURES**

WHEREAS, the City Council of the City of Sultan has determined that it is in the best interests of the City of Sultan to provide guidelines and procedures for conducting Council meetings; and

WHEREAS, the City Council has determined that the procedures should be consistent with current practice; and

WHEREAS, the City Council wants to provide for orderly meetings and to provide for efficient and effective conduct of city business; and

WHEREAS, the City Council adopted Resolution No. 07-05 revising its Council meeting procedures on April 12, 2007; and

WHEREAS, the City Council determined to change its procedures for quasi-judicial closed record hearings to not allow public comment during a closed record hearing;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sultan that the attached document entitled "City of Sultan Council Meeting Procedures" is hereby amended.

Section 1.

Section 6, Public Hearings, of the document entitled "City of Sultan Council Meeting Procedures" is hereby amended to add a new Section 6.4 Quasi-Judicial Closed Record Hearing Procedures, as set forth in Attachment A.

PASSED AND ADOPTED this 27th day of March 2008.

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Carolyn Eslick, Mayor

ATTEST:

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Laura J. Koenig, City Clerk/Treasurer

## 6.1 Quasi-Judicial Closed Record Hearings

- 1) Closed record hearings will proceed in an orderly fashion. A Closed Record Hearing means that the Council bases its decision on the record developed at the Open Record Hearing before the Hearing Examiner. Therefore, only limited oral comment is allowed at the hearing from City Staff, the Applicant or Appellant.
- 2) Comments from City Staff, the Applicant or the Appellant must be in the nature of argument only, based on and limited to evidence in the written and oral record developed before the Hearing Examiner. If a speaker presents an argument that is not based on facts in the record, any party may make an objection. If an objection is made, the person speaking will stop until the issue of the objection is resolved.
- 3) All comments should be made from the speaker's rostrum and each speaker must begin by giving his or her name and address.
- 4) If anyone requires special accommodations in order to speak, they should notify the City Clerk
- 5) Because this is a quasi-judicial hearing, the law known as the "Appearance of Fairness Doctrine" requires Councilmembers to disclose information that might affect their ability to be fair and impartial prior to the start of the hearing.
- 6) The Mayor or Mayor Pro Tem will ask the Council a series of questions so that the proceedings may comply with the requirements of the law.
- 7) Each Councilmember should individually answer yes or no to all of the following questions.
  - a. Does any Councilmember have any interest in the property that is the subject of the hearing?
  - b. Does any Councilmember stand to gain or lose financially as a result of the outcome of this hearing?
  - c. Has any Councilmember engaged in any oral, written, or electronic communication, outside this hearing, with opponents or proponents on the matter to be heard? If so, the Councilmember must state the substance of such communication so that other interested parties may have the right at the hearing to rebut the substance of the communication.
- 8) The Mayor or Mayor Pro Tem will ask member of the public whether anyone object to any Councilmember participating in these proceedings. If someone objects, the Mayor or Mayor Pro Tem will ask them to state

their reasons. After hearing the reasons, the Councilmember will have to decide whether to participate in the hearing, and may consult with the City Attorney if necessary. The Mayor or Mayor Pro Tem may request that a Councilmember excuse themselves from the Hearing to maintain appearance of fairness.

- 9) Staff will introduce the subject by summarizing the Hearing Examiner's recommendation. The Applicant will then be allowed up to fifteen (15) minutes to make argument based on the record that was before the Hearing Examiner.
- 10) The Applicant and Appellant to the matter, if applicable, will be allowed fifteen (15) minutes to make argument based on the record that was before the Hearing Examiner.
- 11) Following the argument, the Council will discuss the matter. Council may ask questions of speakers if necessary. The questions, however, should be designed only to elicit evidence from the record. When discussion is concluded, the hearing will be closed.
- 12) The Staff Report will be presented.
- 13) The Applicant may present argument based upon the record and recommendation.
- 14) City staff respond to any subjects raised
- 15) The Council may discuss the matter and ask questions of any speaker or staff.
- 16) The closed record hearing will be closed.