

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: Action A 2
DATE: September 11, 2008
SUBJECT: First Reading of Ordinance 983-08
Amendment of Title 21.04, Conditional Use Permits
CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:

The issue before the City Council is to conduct first reading of Ordinance 983-08. This Ordinance enacts the following:

1. Remove the \$850.00 fee set in the code and provide for the fee to be set by resolution through the annual fee schedule adopted by the City Council.
2. Change references in SMC 21.04 from "Planning Commission" to "Hearing Examiner" to be consistent with SMC 2.26 and SMC 16.120.
3. Remove the Planning Commission (Planning Board) from the following processes, and invest these authorities in the City Council to be consistent with SMC 2.26 and SMC 16.120:
 - i. 21.04.070; Revocation or modification of conditional uses
 - ii. 21.04.080; Acting on performance bonds and securities
 - iii. 21.04.090; Accepting resubmittals of applications for conditional uses

BACKGROUND:

The Council held a public hearing on this ordinance at its regular meeting of August 28, 2008. There was no public comment offered at the hearing.

Council Member Blair called attention to Section 21.04.010 of the proposed code amendment. The last line of that section includes the language "... and the city council shall approve." The "shall" needs to be changed to "may" to make clear that the council is not required by code to approve the recommendation of the Hearing Examiner. That change has been made in the attached ordinance draft.

STAFF RECOMMENDATION:

Conduct first reading of Ordinance 983.08

ATTACHMENTS:

Attachment A : Proposed Amendments to SMC 21.04 as Ordinance No. 938-08
Attachment B: Staff Report, August 28, 2008

ORDINANCE 983-08

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING
SULTAN MUNICIPAL CODE SECTION 21.04 PERTAINING TO FEES AND
ADMINISTRATION OF CONDITIONAL USE APPLICATIONS.**

WHEREAS, it is the intent of the City to publish its fees in a Fee Schedule, and remove various fees from the Municipal Code; and

WHEREAS, Sultan Municipal Code Section 21.04.030 contains a codified provision for a filing fee of \$850.00 for a conditional use application; and

WHEREAS, authorization for the City of Sultan Planning Commission has been repealed and authorities for conduct of quasi-judicial hearings has been vested in a Hearing Examiner; and

WHEREAS, Sultan Municipal Code Section 21.04 contains a codified provision stating that the Planning Commission will review and make recommendations to the City Council regarding conditional use applications;

WHEREAS, the City of Sultan Planning Board held a public hearing on this amendment proposal at its regular meeting of August 5, 2008;

WHEREAS, the City of Sultan City Council held a public hearing on this amendment proposal at its regular meeting of August 28, 2008, and received no public input on the proposal;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN ,
WASHINGTON DO ORDAIN AS FOLLOWS:**

Section 1. The City of Sultan hereby amends Sultan Municipal Code Section 21.04 to: remove the fee reference from the code; delete references to the planning commission and; vest with the hearing examiner all responsibilities previously vested in the planning commission.

Section 2. Sultan Municipal Code is amended as follows:

**Chapter 21.04
CONDITIONAL USE PERMITS**

Sections:

21.04.010 Purpose.

21.04.020 Uses requiring a conditional use permit.

21.04.030 Application – Requirements and fees.

21.04.050 Criteria.

21.04.052 Additional criteria for single-family detached dwelling (clustered).

21.04.054 Additional criteria for duplexes or two-family dwellings.

21.04.060 Expiration and renewal.

21.04.070 Revocation of permit.

21.04.080 Performance bond and other security.

21.04.090 Resubmittal of application.

21.04.010 Purpose.

It is the purpose of this chapter to establish review and permit approval procedures for unusual or unique types of land uses, which, due to their nature, require special consideration of their impact on the neighborhood, and land uses in the vicinity. The uses ~~in approved under the provisions of this chapter may be located in any district by special permission of the planning commission zone districts listing the use as a~~ “Conditional Use” under such conditions as the commission hearing examiner may recommend and the city council shall may approve. (Ord. 690-98)

21.04.020 Uses requiring a conditional use permit.

The following are the uses which require a conditional use permit:

A. The ~~conditional uses listed in the specified use districts as~~ “Conditional Uses” require a conditional use permit in order to locate and operate in an appropriate zone district within the city.

B. Existing nonconforming uses which wish to expand. (Ord. 690-98)

21.04.030 Application – Requirements and fees.

Application for conditional use permits shall be filed with the planning department on forms prescribed by that office. A filing fee of ~~\$850.00~~ in the amount set by the Fee Schedule adopted by the City Council shall accompany all applications. The ~~planning commission hearing examiner will review applications for conditional use permits and the recommendations will be passed to the city council for final action. The planning commission hearing examiner may recommend to the city council denial, approval, or approval with conditions.~~ Conditional use applicants must adhere to all applicable public notification requirements. Denial of conditional use permit applications is not appealable. All conditional use permits are subject to design review procedures. (Ord. 690-98)

21.04.050 Criteria.

The following criteria shall apply in granting a conditional use permit:

A. The proposed conditional use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed conditional use or in the district in which the subject property is situated;

B. The proposed conditional use shall meet or exceed the performance standards that are required in the district it will occupy;

C. The proposed conditional use shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design as approved by the design review committee;

D. The proposed conditional use shall be consistent with the goals and policies of the comprehensive land use policy plan;

E. All measures have been taken to minimize the possible adverse impacts, which the proposed use may have on the area in which it is located. (Ord. 690-98)

21.04.052 Additional criteria for single-family detached dwelling (clustered).

The following additional criteria apply to allow single-family detached dwelling(s) (clustered):

A. The density on the property may not be greater than but should match the density for single-family detached dwellings;

B. Where urban density goals are to be achieved, but critical areas can be adequately protected, dimensional requirements for lot size, lot width, front and rear yard setbacks may be decreased by no more than 20 percent;

C. As a result of the design of the subdivision, a minimum of 20 percent of the net land area of continuous, publicly accessible open space such as stream or wetland and associated buffers, a ravine, bluff or other unique topographic feature, or conservation area is preserved;

D. As a result of the dwellings and any subdivision, the availability of housing to all economic segments of the population is increased, and housing density variety is preserved throughout the community. (Ord. 780-02 § 16)

21.04.054 Additional criteria for duplexes or two-family dwellings.

The following additional criteria apply to allow duplexes or two-family dwellings:

A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.

B. The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan. (Ord. 780-02 § 17)

21.04.060 Expiration and renewal.

A conditional use permit shall automatically expire one year after a notice of decision approving the permit is issued unless a building permit conforming to plans for which the CUP was granted is obtained within that period of time. A conditional use permit shall automatically expire unless substantial construction of the proposed development is completed within two years from the date a notice of decision approving the permit is issued. ~~The planning commission or city council, on appeal, may authorize longer periods for a conditional use permit if appropriate for the project. The planning commission or city council, on appeal, may grant a single renewal of the conditional use permit if the party seeking the renewal can demonstrate extraordinary circumstances or conditions not known or foreseeable at the time the original application for a conditional use permit was granted, which would not warrant such a renewal. No public hearing is required for a renewal of a conditional use permit. (Ord. 690-98)~~

21.04.070 Revocation of permit.

A. ~~The planning commission~~ city council may revoke or modify a conditional use permit. Such revocation or modification shall be made on any one or more of the following grounds:

1. That the approval was obtained by deception, fraud, or other intentional and misleading representations;

2. That the use for which such approval was granted has been abandoned;

3. That the use for which such approval was granted has at any time ceased for a period of one year or more;

4. That the permit granted is being exercised contrary to be the terms or conditions of such approval or in violation of any statute, resolution, code, law or regulation; or

5. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety.

B. Any aggrieved party may petition the ~~planning commission~~ city council in writing to initiate revocation or modification proceedings.

C. Before a conditional use permit may be revoked or modified, a public hearing shall be held. Procedures concerning notice, reporting and appeals shall be the same as required by this chapter for the initial consideration of a conditional use permit application. (Ord. 690-98)

21.04.080 Performance bond and other security.

A performance bond or other adequate and appropriate security may be required for any elements of the proposed project which the ~~planning commission~~ hearing examiner or city council, ~~on appeal~~, determines are crucial to the protection of the public welfare. Such bond shall be in an amount equal to 125 percent of the cost of the installation or construction of the applicable improvements. (Ord. 690-98)

21.04.090 Resubmittal of application.

An application for a conditional use permit, which has been denied, may not be resubmitted within six months from the date of ~~planning commission or city council disapproval, whichever is later~~. (Ord. 690-98)

PASSED by the City Council and **APPROVED** by the Mayor the ___th day of _____, 20__.

CITY OF SULTAN

By _____
Carolyn Eslick, Mayor

Attest:

By _____
Laura Koenig, City Clerk

Approved as to form:

By _____
Kathy Hardy, City Attorney

SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: H-1

DATE: August 28, 2008

SUBJECT: Sultan Municipal Code (SMC) Amendments
Section 21.04

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:

Conduct public hearing on Amendments to SMC 21.04, "Conditional Uses".

STAFF RECOMMENDATION:

1. Conduct a public hearing to take public comment on the Planning Board's recommendation to amend Sultan Municipal Code 21.04 to:
 2. Remove the \$850.00 fee set in the code and provide for the fee to be set by resolution through the annual fee schedule adopted by the City Council.
 3. Change references in SMC 21.04 from "Planning Commission" to "Hearing Examiner" to be consistent with SMC 2.26 and SMC 16.120.
 4. Remove the Planning Commission (Planning Board) from the following processes, and invest these authorities in the City Council to be consistent with SMC 2.26 and SMC 16.120:
 - i. 21.04.070; Revocation or modification of conditional uses
 - ii. 21.04.080; Acting on performance bonds and securities
 - iii. 21.04.090; Accepting resubmittals of applications for conditional uses

BACKGROUND:

For comprehensive plan and development regulation amendments, the statutes (RCW 35A.63.073 and 35A.63.070) require at least one public hearing. Notice is to be given as provided by ordinance and published at least ten days prior to the hearing. If continued hearings are held, no additional notices need be published.

The Planning Board discussed SMC 21.04 at its February 19, 2008 meeting. On April 1, 2008 the Planning Board set the public hearing for April 15, 2008. City staff missed

the 10-day notice period for the April 15, 2008 meeting. The notice was sent out on April 22, 2008 and published in the Everett Herald on April 25, 2008 to hold a public hearing on May 6, 2008.

The Washington State Department of Community Trade and Economic Development (CTED) has reviewed this proposed amendment.

The Planning Board held a public hearing on May 6, 2008. There was no public comment, and the Board voted unanimously to recommend the proposed amendment to the City Council.

Council held a public hearing on July 10, 2008. Since the Council held its hearing, the city attorney recognized conflicts with the Planning Board (Commission) taking action on revocation, bonding, and resubmittal of conditional use applications.

Staff review prior to forwarding to Council indicated several additional items needing amendment. To provide abundant opportunity for public involvement, the notices were run again, and the Planning Board conducted public hearings on the new versions of these amendments at the regular meeting of August 5, 2008.

The Planning Board conducted an additional public hearing on the final draft of these proposed amendments at its regular meeting of August 5. The Board made a motion to forward the proposed Ordinance 983.08 (Attachment A) to the City Council with a recommendation for approval.

SUMMARY:

The City is looking to: place the Conditional Use application fee in the Fee Schedule along with other land use processing fees; clarify roles of the Hearing Examiner and City Council in processing of such applications; and remove the Planning Commission (Board) from the process for these quasi-judicial procedures.

To provide for ample public input opportunity, council is requested to conduct another public hearing to review additional changes that were brought to the fore by the city attorney since the last hearing.

RECOMMENDATION:

Conduct a public hearing to:

1. Amend the Sultan Municipal Code 21.04.030 by removing the \$850.00 required filing fee for Conditional Use Permits and move the fee to the Fee Schedule, and clarify Hearing Examiner, City Council, and Planning Board (Commission) roles in Conditional Use processes.

ATTACHMENTS:

Attachment A: Draft Ordinance 983.08

Attachment B: Planning Board minutes of August 5 public hearing
