

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: PH-1

DATE: September 11, 2008

SUBJECT: Hold a Public Hearing to take public comment on adopting Ordinance No. 991-08 to adopt additional Findings of Fact and renewing the Land Use Moratorium Established by Ordinance No. 981-08

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to hold a public hearing to take public comment on renewing the land use moratorium established by Ordinance No. 981-08 for an additional five (5) month period.

Following the public hearing, the City Council should have First Reading and adoption of Ordinance No. 991-08 (Attachment A) to adopt additional findings of fact and renew the land use moratorium established by Ordinance No. 981-08.

It is the intent of the Council to lift this moratorium at such time as the Growth Management Hearings Board (Board) rescinds its determination of invalidity and the City Council has an opportunity to evaluate the Board's decision.

STAFF RECOMMENDATION:

- 1) Hold a public hearing to take public comment on renewing the land use moratorium established by Ordinance No. 981-08 for an additional five (5) month period.
- 2) Have First Reading and Adoption of Ordinance No. 991-08 amending Ordinance no. 981-08; renewing for an additional five moth period the temporary moratorium on the acceptance of and processing of applications for subdivisions, planned unit developments, rezones and annexations set to expire on September 13, 2008; adopting findings in support of said renewal; providing for severability; declaring an emergency; and establishing an effective date.

SUMMARY:

Ordinance 981-08 (Attachment B) imposed 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.

Ordinance No. 981-08 expires on September 13, 2008. Under RCW 36.70A.390 and RCW 35A.63.220, a moratorium, interim zoning map, interim zoning ordinance, or interim official control 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.

The Council must consider the moratorium imposed, to determine whether to renew the moratorium, modify it or rescind it, and at which time, if the moratorium is renewed or modified, to adopt findings of fact justifying the Council's decision.

Findings of fact must be based on documentation and testimony that is part of the record of the public hearing, including staff reports and attachments to staff reports, exhibits admitted during the public hearing, and testimony. The proposed Findings of Fact are based on the record created during the prior six-month period:

Moratorium Findings of Fact

1. The Central Puget Sound Growth Management Hearings Board (the "Growth 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).
2. The City received the Growth Board's Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007.
3. At a Compliance Hearing on February 7, 2008, the Growth Board instructed the City to advise the Growth Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP.
4. The Growth Board determination of invalidity means the TIP and CFP cannot be used to determine concurrency. Because the City's development regulations (SMC 16.108.030) require certificates of concurrency for certain development approvals, such as Planned Unit Developments and Subdivisions, the City has been in a de facto moratorium since the City received the Growth Board's order in *Fallgatter IX* on September 6, 2007.

5. Although invalidity prevents the City from approving new development applications that require a certificate of concurrency, the City may not refuse to accept those new development applications unless a moratorium is adopted.
6. A comment letter from Master Builders Association of King and Snohomish Counties (“MBA”) was received on February 26, 2008 and indicated the City was in “a unique circumstance in which a moratorium may not be needed” but further noted that “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.” MBA offered the assistance of their staff and members “in order to complete the plan in a timely manner.”
7. The City Council and Planning Board have worked together since January 2008 to revise the 2004 Comprehensive Plan so the capital facilities plan and financing strategy, transportation improvement financing strategy, levels of service standards, and implementing development regulations meet the requirements of the State Growth Management Act.
8. The City issued the Draft 2008 Revised Comprehensive Plan and Draft Supplemental Environmental Impact Statement for public comment on July 1, 2008. The comment period covered both the requirements of the Growth Management Act (GMA) and State Environmental Policy Act (SEPA). The comment period ended on September 2, 2008.
9. The Final Supplemental Environmental Impact Statement will be issued on or about September 24, 2008.
10. The City Council is expected to take action on the 2008 Revised Plan on September 25, 2008 to meet the September 30, 2008 deadline set by the Central Puget Sound Growth Management Hearings Board.
11. The City must file a statement of its compliance actions with the Growth Management Hearings Board on October 10, 2008, and the Compliance Hearing in front of the Growth Management Hearings Board is scheduled for November 6, 2008, and the Growth Management Hearings Board has thirty (30) days from the Hearing date to rescind invalidity.
12. The outcome of the Growth Management Hearings Board’s decision is uncertain. The City wishes to have ample opportunity to evaluate the Board’s decision and impact on land use planning before rescinding the moratorium. The City’s first regular meeting in January is January 1, 2009, which is a national holiday. The Council has not established an amended meeting schedule.

Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council may additionally enter supplemental findings of fact in support of renewing the moratorium imposed under Ordinance 981-08.

BACKGROUND:

At a Compliance Hearing on February 7, 2008, the Growth Management Hearings Board (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.

Because three Council members could not attend the Council meeting on February 28, 2008, the remaining four Council members continued the moratorium discussion to their March 13, 2008 meeting when all Council members could be present.

The City Council held a public hearing on March 13, 2008 and adopted Ordinance No. 981-08 imposing a moratorium. A number of people provided comments during the hearing.

State law allows cities to adopt a moratorium without holding a public hearing prior to adoption as long as a public hearing is held within at least sixty days of its adoption whether or not the governing body received a recommendation on the matter from the planning commission or department.

The Planning Board held a public hearing on March 19, 2008 and recommended additional findings of fact on Ordinance no. 981-08.

DISCUSSION:

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 finding of invalidity means 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 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 Board made its findings on Fallgatter IX back on September 5, 2007.

The difference between a moratorium and a de facto moratorium is that under a moratorium, the City may not accept certain development applications as defined in the ordinance. Under a de facto moratorium, the City may accept applications and process those applications to the point where a certificate of concurrency is required for approval.

Moratorium

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

The moratorium is limited to those development applications where the City is required to issue certificates of concurrency. The moratorium is intended to address the Growth Management Hearings Board's concerns to prevent vesting of development applications in the absence of a valid CFP.

The moratorium included 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 Thursday, March 13, 2008, the community development director is unable 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 does 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 does not apply to:

1. Applications for development that vested before September 6, 2007, including related construction permits for those vested applications;
2. Applications for development that do not require a certificate of concurrency for approval.

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

1. 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.
2. 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.
3. A boundary line adjustment or a division of land that does not increase the number of buildable lots existing before September 6, 2007

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

RECOMMENDED ACTION:

Hold the Public Hearing. Discuss the additional findings of fact. Have First Reading and Adoption of Ordinance No. 991-08 renewing the land use moratorium established by Ordinance No. 981-08 for five months.

ATTACHMENTS:

- A – Ordinance No. 991-08
- B – Ordinance No. 981-08

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 991-08

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING ORDINANCE NO. 981-08; RENEWING FOR AN ADDITIONAL FIVE MONTH PERIOD THE TEMPORARY MORATORIUM ON THE ACCEPTANCE OF AND PROCESSING OF APPLICATIONS FOR SUBDIVISIONS, PLANNED UNIT DEVELOPMENTS, REZONES AND ANNEXATIONS SET TO EXPIRE ON SEPTEMBER 13, 2008; ADOPTING FINDINGS IN SUPPORT OF SAID RENEWAL; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND ESTABLISHING AN EFFECTIVE DATE.

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, 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, through the adoption of Ordinance No. 981-08 on March 13, 2008, the Sultan City Council imposed a six-month moratorium upon the acceptance and processing of 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 ; and

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

WHEREAS, the City has worked for the past six months to revise the 2004 City of Sultan Comprehensive Plan to address Growth Management Act compliance issues identified by the Growth Management Hearings Board;

WHEREAS, the City must file a statement of its compliance actions with the Growth Management Hearings Board on October 10, 2008, and the Compliance Hearing in front of the Growth Management Hearings Board is scheduled for November 6, 2008, and the Growth Management Hearings Board has thirty (30) days from the Hearing date to rescind invalidity; and

WHEREAS, the outcome of the Growth Management Hearings Board's decision is uncertain, and the City wishes to have ample opportunity to evaluate the Board's decision and impact on land use planning before rescinding the moratorium;

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

Section 1. Findings. The recitals above are hereby adopted as findings in support of the moratorium renewal affected by this ordinance. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council further makes and enters the additional findings contained in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Moratorium Renewed. The moratorium imposed under Ordinance No. 981-08 is hereby renewed for an additional five month period commencing on September 13, 2008. From and after the first day after the effective date of this Ordinance, the community development 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 4 of this Ordinance, this moratorium shall be effective for a period of five months from the effective date of this Ordinance.

Section 3. Clarification of Nonapplicability. This moratorium does not apply to applications for short subdivisions under SMC 16.28.010 through 16.28.240, or to 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 receipt by the county or city of the board's order, 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 receipt of the board's order by the county or city; and
- (iii) 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.

Section 4. Duration. A public hearing shall be held not later than five 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.

Section 5. 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 6. 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 7. Declaration of Emergency, Statement of Urgency, Effective date. Based on the findings enumerated in Section 1 of this ordinance and any subsequent enactment relevant here, the City Council declares a public emergency necessitating an immediate effective date of the moratorium imposed hereunder. Said moratorium shall take effect immediate, and shall remain effective for five months unless terminated earlier by the City Council. PROVIDED, the City Council may, in its sole discretion, renew said moratorium for one or more six month periods in accordance with state law.

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

Exhibit A

Moratorium Findings of Fact

13. The Central Puget Sound Growth Management Hearings Board (the “Growth 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).
14. The City received the Growth Board’s Final Decision and Order in *Fallgatter IX* invalidating the CFP on September 6, 2007.
15. At a Compliance Hearing on February 7, 2008, the Growth Board instructed the City to advise the Growth Board if the City would consider the adoption of a moratorium to prevent vesting of development applications in the absence of a valid CFP.
16. The Growth Board determination of invalidity means that the TIP and CFP cannot be used to determine concurrency. Because the City’s development regulations (SMC 16.108.030) require certificates of concurrency for certain development approvals, such as Planned Unit Developments and Subdivisions, the City has been in a de facto moratorium since the City received the Growth Board’s order in *Fallgatter IX* on September 6, 2007.
17. Although invalidity prevents the City from approving new development applications that require a certificate of concurrency, the City may not refuse to accept those new development applications unless a moratorium is adopted.
18. A comment letter from Master Builders Association of King and Snohomish Counties (“MBA”) was received on February 26, 2008, and indicated that the City was in “a unique circumstance in which a moratorium may not be needed.” But further noted that “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.” MBA offered the assistance of their staff and members “in order to complete the plan in a timely manner.”
19. The City Council and Planning Board have worked together since January 2008 to revise the 2004 Comprehensive Plan so the capital facilities plan and financing strategy, transportation improvement financing strategy, levels of service standards, and implementing development regulations meet the requirements of the State Growth Management Act.
20. The City issued the Draft 2008 Revised Comprehensive Plan and draft Supplemental Environmental Impact Statement for public comment on July 1, 2008. The comment period covered both the requirements of the Growth Management Act (GMA) and State Environmental Policy Act (SEPA). The comment period ended on September 2, 2008.
21. The Final Supplemental Environmental Impact Statement will be issued on or about September 24, 2008.
22. The City Council is expected to take action on the 2008 Revised Plan on September 25, 2008 to meet the September 30, 2008 deadline set by the Central Puget Sound Growth Management Hearings Board.

23. The City must file a statement of its compliance actions with the Growth Management Hearings Board on October 10, 2008, and the Compliance Hearing in front of the Growth Management Hearings Board is scheduled for November 6, 2008, and the Growth Management Hearings Board has thirty (30) days from the Hearing date to rescind invalidity.
24. The outcome of the Growth Management Hearings Board's decision is uncertain. The City wishes to have ample opportunity to evaluate the Board's decision and impact on land use planning before rescinding the moratorium. The City's first regular meeting in January is January 1, 2009 which is a national holiday. The Council has not established an amended meeting schedule.

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:

- (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 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 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 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