SULTAN CITY COUNCIL

AGENDA ITEM COVER SHEET

ITEM NO: C-7

DATE: September 25, 2008

SUBJECT: Sultan Municipal Code (SMC) Amendments
Section 21.04

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:
The issue before the Council is to conduct second reading and adoption 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

DISCUSSION:
In final review of the draft ordinance, an editorial correction was inserted. In line 2 of Section 21.04.020 A., it was noted that the language did not make fully clear that existing conditional uses need a conditional use procedure to expand beyond what was permitted by the original conditional use permit. This language correlates with Section 21.04.070 A.4. which requires that a conditional use be exercised within the terms and conditions of its permit.

Section 21.04.020 now reads as follows (new language underlined):

A. The uses listed in the use districts as "Conditional Uses" require a conditional use permit in order to locate and operate <u>or to expand</u> in an appropriate zone district within the city.

BACKGROUND:
The Council held a public hearing on this ordinance at its regular meeting of August 28, 2008, and held first reading of this ordinance at its regular meeting of September 11, 2008.

RECOMMENDATION:
Move for Second Reading and Adoption of Ordinance 983.08.

ATTACHMENTS:
Attachment A: Proposed Amendments to SMC 21.04 as Ordinance No. 983.08.

ATTACHMENT A

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;

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 approved under the provisions of this chapter may be located in zone districts listing the use as a "Conditional Use" under such conditions as the hearing examiner may recommend and the city council 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 uses listed in the use districts as "Conditional Uses" require a conditional use permit in order to locate and operate or expand 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 in the amount set by the Fee Schedule adopted by the City Council shall accompany all applications. The hearing examiner will review applications for conditional use permits and the recommendations will be passed to the city council for final action. The 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 City Council may authorize longer periods for a conditional use permit if appropriate for the project. The city council 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 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 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 hearing examiner or city council 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 city council disapproval. (Ord. 690-98)

PASSED by the City Council and **APPROVED** by the Mayor
the _____ 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