

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-9

DATE: December 11, 2008

SUBJECT: Ordinance No. 1009-09 First Reading to Repeal Ordinance No. 981-08 Establishing a Moratorium on Certain Land Use Applications

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to have First Reading of Ordinance No. 1009-09 (Attachment A) to repeal Ordinance No. 981-08 and lift the five-month temporary moratorium on accepting and processing certain land use applications.

Second reading and adoption of Ordinance No. 1009-08 is scheduled for January 8, 2009.

STAFF RECOMMENDATION:

Have First Reading of Ordinance No. 1009-09 to repeal Ordinance No. 991-08 and lifting the five month temporary moratorium on the acceptance of and processing of applications for subdivisions, planned unit developments, rezones and annexations.

SUMMARY:

On September 25, 2008, the City Council approved a five-month moratorium on accepting and processing certain land use applications. It was the intent of the Council to lift this moratorium at such time as the Growth Management Hearings Board (Board) rescinded its determination of invalidity and the City Council had an opportunity to evaluate the Board's decision.

On November 10, 2008, the Central Puget Sound Growth Management Hearings issued an order of compliance rescinding invalidity in Fallgatter VIII-Transportation Improvement Plan; an order of compliance rescinding invalidity in Fallgatter IX – Capital Facilities Plan; and found the City's revised development regulations compliant with Growth Management Act.

Ordinance No. 1009-09 will repeal Ordinance No. 991-08 as adopted by the Sultan City Council on September 25, 2008.

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 may be accepted and processed by the City of Sultan following the effective date of Ordinance No. 1009-09.

BACKGROUND:

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

The Central Puget Sound Growth Management Hearings Board 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).

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.

Through the adoption of Ordinance No. 981-08 on March 13, 2008 and the adoption of Ordinance No. 991-08 on September 25, 2008, the Sultan City Council imposed a 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.

RECOMMENDED ACTION:

Have First Reading of Ordinance No. 1009-09 to repeal Ordinance No. 991-08 and lifting the five month temporary moratorium on the acceptance of and processing of applications for subdivisions, planned unit developments, rezones and annexations.

ATTACHMENTS:

- A – Ordinance No. 1009-09
- B – Ordinance No. 991-08

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 1009-09

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON REPEALING ORDINANCE NO. 991-08 AND LIFTING THE FIVE MONTH TEMPORARY MORATORIUM ON THE ACCEPTANCE OF AND PROCESSING OF APPLICATIONS FOR SUBDIVISIONS, PLANNED UNIT DEVELOPMENTS, REZONES AND ANNEXATIONS

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”) 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 and the adoption of Ordinance No. 991-08 on September 25, 2008, the Sultan City Council imposed a 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 was the intent of the Council when it enacted the moratorium to repeal it when the Central Puget Sound Growth Management Hearings Board rescinded its determination of invalidity; and

WHEREAS, on November 10, 2008 the Central Puget Sound Growth Management Hearings issued an order of compliance rescinding invalidity in *FALLgatter VIII*-Transportation Improvement Plan; an order of compliance rescinding invalidity in *Fallgatter IX* – Capital Facilities Plan; and found the City’s revised development regulations compliant with Growth Management Act;

NOW, THEREFORE, the City Council of the City of Sultan, Washington, do ordain as follows:

Section 1. Ordinance No. 991-08 as adopted by the Sultan City Council on September 25, 2008 is hereby repealed as of the effective date of this Ordinance.

Section 2. 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 may be accepted and processed by the City of Sultan following the effective date of this ordinance.

Section 3. 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.

PASSED by the City Council and APPROVED by the Mayor this ____day of _____, 2009.

By _____
CAROLYN ESLICK, Mayor

ATTEST:

By _____
LAURA KOENIG, City Clerk

Approved as to form:

By _____
MARGARET KING, City Attorney

Published: _____, 2009

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

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 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.
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 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.”
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.