

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: C-7

DATE: February 12, 2009

SUBJECT: Second Reading of Ordinance 1015-09, an Amendment to Sultan Municipal Code Section (SMC) 16.134 to contain the Public Participation Policies for Comprehensive Plan and Development Regulations

CONTACT PERSON: Robert Martin, Community Development Director



ISSUE:

Adoption of revised Policies for Public Participation in revision of the Comprehensive Plan and Land Use Development Regulations that support implementation of the Comprehensive Plan.

RECOMMENDED ACTION:

Move for Second Reading and to authorize the Mayor to sign Ordinance 1015-09, an Ordinance adopting the City of Sultan Public Participation and Notice Procedures for Amendments to the Comprehensive Plan, Comprehensive Plan Elements, and Development Regulations; providing for severability; and establishing an effective date.

BACKGROUND:

At its January 22, 2009 regular meeting, the City Council held a Public Hearing on the proposed revisions to SMC 16.134. Subsequent to the Hearing, the Council passed the First Reading of Ordinance 1015-09. This Consent Item is for Second Reading of that Ordinance adopting the revised Public Participation Policies.

On December 16, 2008, the Planning Board set January 6, 2009 as the date for a Public Hearing on the draft Public Participation Policies for Comprehensive Plan and Development Regulation Amendment.

After discussion, the Planning Board directed that the draft presented be modified prior to going to Hearing on January 6th. The Planning Board directed that Level IV Procedure (for changes to Comprehensive Plan Policies and the substantive provisions of the Development Regulations) be revised as follows:

- One mandatory Public Hearing at the Planning Board.
- No mandatory second Public Hearing at the City Council.
- A mandatory recommendation from the Planning Board to the City Council recommending either that the Council should hold an additional Public Hearing on its own motion or that the Council should review the record from the Planning Board Hearing and not hold a second Public Hearing.
- The Council, upon receipt of the Planning Board recommendation must, by motion, up hold the Planning Board recommendation or overturn the recommendation.

The City Council accepted the Planning Board's recommendation. Ordinance 1015-09 includes that recommended language.

SUMMARY OF PLANNING DRAFT POLICIES:

The essential change from current practice is the inclusion of four levels of Public Participation instead of only one. These levels correspond to RCW 36.70A.035 (Attachment C). The proposed draft (Attachment A) is summarized as follows:

Procedure Level I provides for actions authorized by RCW 36.70A.035 (2)(b), (i), (ii), (iii) and (v). This Statute addresses proposed changes in the Comprehensive Plan or Development Regulations that have gone through the Public Notice and input process and the time for public input has passed. If the Planning Board or City Council then wants to amend the proposed change from what was originally advertised, there is no additional public notice or public input required if the conditions of this statute are met.

These conditions include prior review of the proposed amendment in the State Environmental Policy Act (SEPA) program, correction of typographical errors, adoption of moratoriums, capital budget adoption and changes within the scope of actions previously given public notice and input. Actions covered under this statute and Procedure Level II does not require any additional public involvement to be recommended by the Planning Board and adopted by the City Council.

Procedure Level II is used when the Planning Board or the City Council wants to amend a proposed change to the Comprehensive Plan or a Development Regulation that was previously provided public notice and public input, but the amendment comes after the time for public input has passed, and the amendment does not meet one of the conditions for exemption under RCW 36.70A.035 (2)(b) (i),(ii),(iii),(iv), or (v).

In this circumstance, the Planning Board will advertise for a new Public Hearing on the amendment and hold another Public Hearing before deciding on the amendment and making a recommendation to the City Council. The procedure then continues under the procedure that was in play before the amendment.

Procedure Level III applies to minor changes to the Comprehensive Plan or existing Development Regulations. Minor changes are those that change procedures, application standards, or administrative provisions that do not change policies, land uses allowed, or the criteria used to determine if uses are allowed or not allowed, or are format and organizational in nature.

In this case, the Planning Board will advertise and hold a Public Hearing on the proposed change, and make a recommendation to the City Council. The Council then reviews the input received at the Planning Board Hearing and the recommendation of the Planning Board, and proceeds with its decision process without an additional Public Hearing.

Procedure Level IV is used when making major changes to the Comprehensive Plan or Development Regulations, or adopting new Plan Elements or New Development Regulations. Major changes are changes that modify existing policies, adopt new policies, change land uses allowed, change the criteria by which uses are approved or disapproved, or modify the effect of the documents as they manage development in the Community.

In this case, the Planning Board will advertise and hold a Public Hearing on the proposed change, and make a recommendation to the City Council. The Planning Board's recommendation will include whether or not the Board thinks that the City Council should hold a second Hearing. The City Council will receive the citizen input and the recommendation of the Planning Board and determine whether to proceed with the proposed change. If it is determined to proceed, the City Council will vote whether to have a second Public Hearing. If City Council votes to proceed without a second Public Hearing, action may proceed on the proposal. If a second Public Hearing is chosen, the Council will advertise and hold a Hearing on the proposed change (or the amended change if Procedure Level II is engaged before the City Council goes to Hearing).

ANALYSIS:

The City is preparing for the 2011 normal-cycle Comprehensive Plan Review and Update activities. It is appropriate that the Public Participation Program employed for the upcoming Comprehensive Plan Amendment cycle be fully reviewed, and formally adopted before we begin any substantive work on the Comprehensive Plan itself.

It is appropriate to publish the adopted policy document in a highly visible and lasting form so that it can be reliably referenced and employed throughout the plan amendment process. City Staff recommends that the procedure be codified in Sultan Municipal Code Chapter 16.134. "**Attachment A**" is Ordinance 1015-09, an Ordinance amending Public Participation Policy document for updating the Comprehensive Plan and supporting Development Regulations.

ATTACHMENTS:

Attachment A: Ordinance 1015-09 (including text of amended SMC Chapter 16.134)

**CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1015-09**

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, ADOPTING THE CITY OF SULTAN PUBLIC PARTICIPATION AND NOTICE PROCEDURES FOR AMENDMENTS TO THE COMPREHENSIVE PLAN, COMPREHENSIVE PLAN ELEMENTS, AND DEVELOPMENT REGULATIONS; AMENDING SULTAN MUNICIPAL CODE 16.134 TO CODIFY SAID PROCEDURES, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, The City of Sultan, is planning under the Growth Management Act of the State of Washington, and

WHEREAS, Citizen Involvement is the basis for development of Plans and Development Regulations under the Growth Management Act; and

WHEREAS, RCW 36.70A.035 provides a framework for public notice and public participation in the local planning process; and

WHEREAS, the City of Sultan is preparing for the 2011 update cycle of its Comprehensive Plan and Development Regulations; and

WHEREAS, it is the intent of the City Council to have a clearly stated, effective, and legally supported citizen involvement program adopted and published prior to commencing updating of the Comprehensive Plan and its supporting documents; and

WHEREAS, the City of Sultan Planning Board and City Council, in joint session on November 18, 2008, discussed a Staff draft of Public Participation Policies for Amendment of the Comprehensive Plan and Development Regulations; and

WHEREAS, the Planning Board considered the Staff draft at its regular meeting of December 16, 2008, and made certain changes to the draft, and scheduled a Public Hearing on the draft for January 6, 2009; and

WHEREAS, the Planning Board held a Public Hearing on the Planning Commission draft at its regular meeting of January 6, 2009; and

WHEREAS, the Planning Board took public testimony and considered that testimony and additional Staff input on the draft; and

WHEREAS, the Planning Board adopted a motion to recommend adoption of the Public Participation Policies by the City Council; and

WHEREAS, the City Council, at its regular meeting of January 6, 2009, set January 22, 2009 as the date for a Public Hearing on the Public Participation Policies; and

WHEREAS, the City Council held a Public Hearing at its regular meeting of January 22, 2009 and has considered input received at that Hearing, and the recommendation of the Planning Board and the public input received at the Public Hearing of the Planning Board,

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

Section 1. The CITY OF SULTAN PUBLIC PARTICIPATION AND NOTICE PROCEDURES FOR AMENDMENTS TO THE COMPREHENSIVE PLAN, COMPREHENSIVE PLAN ELEMENTS, and DEVELOPMENT REGULATIONS is hereby adopted.

Section 2. Sultan Municipal Code Chapter 16.134 is amended as follows (Attachment A).

Section 3. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF _____, 2009.

CITY OF SULTAN

Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

Laura Koenig, City Clerk

Approved as to form:

Margaret J. King, City Attorney

Passed by the City Council:

Date of Publication:

Effective Date:

CHAPTER 16.134

PUBLIC PARTICIPATION AND NOTICE PROCEDURES FOR AMENDMENTS TO THE COMPREHENSIVE PLAN, COMPREHENSIVE PLAN ELEMENTS, AND DEVELOPMENT REGULATIONS

16.134.010 Purpose

- A. This document provides the City of Sultan's Public Participation and Notice Procedures for legislative land use actions. It does not provide procedures for any site-specific quasi-judicial land use action.
- B. The public participation procedures established in this document are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations, of proposed amendments to comprehensive plans and development regulations as required and limited by RCW 36.70A.035 and RCW 36.70A.140.
- C. It is the intent and policy of the City of Sultan to provide its citizens with full opportunity to interact and participate in the process of guiding the future land use and development of the community. Further, it is the intent of the City to have processes and procedures that allow for effective and efficient management of actions at different levels of importance and interest to the public.
- D. To provide appropriate opportunity for meaningful public involvement and to provide for effective operations, this document differentiates between various processes and provides for levels of public participation, notice, and review and adoption procedures that are commensurate with the action being undertaken as described and provided for in RCW 36.70A.035.

16.134.020 Procedure Level I

- A. **Applicability:** Procedure Level I applies to circumstances under which no additional public review and comment period is provided. This procedure is as provided in RCW 36.70A.035 (2)(b) (i),(ii),(iii),(iv), and (v).
- B. This procedure applies to amendments to a proposed change in the Comprehensive Plan or Development Regulations when the opportunity for public review and comment on the original proposed change has passed. The amendment to the proposed change will be acted on without further notice or public input if one or more of the following conditions pertain to the amendment.
 - 1. Actions where an environmental impact statement has been prepared under chapter 43.21 RCW for the pending resolution or ordinance and the proposed change in the pending ordinance or resolution is within the range of alternatives considered in the environmental impact statement;
 - 2. The proposed change is within the scope of the alternatives available for public comment when the original notice and proposed ordinance or resolution was released for public comment;
 - 3. The proposed change only corrects typographical errors, corrects cross references, make address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
 - 4. The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
 - 5. The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.
- C. **STEP 1:** No additional opportunity for public review is provided for actions meeting one or more of the 5 descriptions above.
- D. **STEP 2:** Make the proposed change in the ordinance or resolution under consideration and proceed with the procedure (Level II, III, or IV) that is applicable to the action under consideration.

16.134.030 Procedure Level II

- A. **Applicability:** Procedure Level II applies to amendments to a proposed change in the Comprehensive Plan or development regulation when the proposed change has already been provided public notice and public input, and the opportunity for input on the original proposed change has passed, and provisions of RCW 36.70a.035 (2)(a) apply to the amendment.
- B. This procedure applies to amendments to a proposed change in the Comprehensive Plan or Development Regulations when the opportunity for public review and comment on the original proposed change has passed and the proposed amendment does not meet the conditions of RCW36.70A.035 (2)(b) (i),(ii),(iii),(iv), and (v) as described in Procedure I above.
- C. **STEP 1:** Proposed Amendment is initiated by:
 - 1. City Council
 - 2. Planning Board
 - 3. City Staff
- D. **STEP 2:** Proposed amendment is mailed or e-mailed to State Department Community Trade and Economic Development (CTED) for 60-day review period. City advises CTED of the proposed Public Hearing schedule for Amendment.
- E. **STEP 3:** Public Hearing is scheduled before Planning Board (This can occur during or after CTED Review).
- F. **STEP 4:** Publish the Planning Board Public Hearing Date
 - 1. As provided in RCW 36.70A.140 and WAC 365-195-600, errors in exact compliance with these established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.
 - 2. Publication and notice shall be provided as follows
 - a. Everett Herald not less than 10 days prior to hearing (WAC 365-195-600)
 - b. Post at City Hall & Post Office
 - c. Post on City Web Site, and other available sites of known interest
 - d. Post on Public Access Channel when available
 - e. Agenda e-mailed to parties of interest who have requested notification when e-mail address is available
 - f. Post on City Utility Bills when available subject to billing schedule
- G. **STEP 5:** Planning Board conducts a public hearing
- H. **STEP 6:** Planning Board recommendation on amendment and public input received at the hearing are forwarded to City Council.
- I. **STEP 7:** City Council considers Planning Board recommendation and public input received at Planning Board public hearing.
- J. **STEP 8:** First Reading of Ordinance on City Council Agenda/Meeting. (Public Comments are taken on Agenda items by City Council).
- K. First and Second Reading may be combined at Council option.
- L. **STEP 9:** Second Reading of Ordinance on City Council Agenda/Meeting (Public Comments are taken on Agenda items by City Council).
- M. **STEP 10:** If adopted, the Ordinance Amending the Regulation(s) is published, and Effective 5-days after Publication Date.
- N. **STEP 11:** Copies of Revised Regulation(s) are distributed to interested parties.

16.134.040 Procedure Level III

- A. **Applicability:** Procedure Level III applies to amendments to the Comprehensive Plan or existing development regulations that address only procedures, or administrative provisions without substantively changing the effect of the Comprehensive Plan or the development regulation as regards its implementation of the Comprehensive Plan (as described in RCW 36.70A.035(2)(b)(iii).
- B. Level III actions are changes that do not materially affect the types of uses allowed on the ground and do not materially alter the criteria, standards, or conditions under which those uses are reviewed and determined to be allowed or not allowed.
- C. **Examples of Level III actions**
 - 1. Changes in required application information
 - 2. Changes in application procedures
 - 3. Adjustment of notice periods or application review periods
 - 4. Changes in application processing procedures
 - 5. Changes in bonding requirements
 - 6. Changes in public dedications and similar language or depictions required on plats and other developer documents
 - 7. Procedural changes mandated by State Statute
 - 8. Changes in appeal procedures
 - 9. Changes in notice procedures or time lines
 - 10. Similar standards or procedures that do not make a substantive change in the effect of the Comprehensive Plan or the effect of the development regulation.
- D. **STEP 1:** Proposed Amendment is initiated by:
 - 1. City Staff
 - 2. City Council
 - 3. Planning Board
 - 4. Member of the Public
- E. **STEP 2:** Proposed amendment is mailed or e-mailed to State Department Community Trade and Economic Development (CTED) for their 60-day review period. City advises CTED of the proposed Public Hearing schedule for Amendment.
- F. **STEP 3:** A Public Hearing is scheduled before Planning Board (This can occur *during or after* CTED Review).
- G. **STEP 4:** Publish the Planning Board Public Hearing Date
 - 1. As provided in RCW 36.70A.140 and WAC 365-195-600, errors in exact compliance with these established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.
 - 2. Publication and notice shall be provided as follows
 - a. Everett Herald not less than 10 days prior to hearing (WAC 365-195-600)
 - b. Post at City Hall & Post Office
 - c. Post on City Web Site, and other available sites of known interest
 - d. Post on Public Access Channel when available
 - e. Agenda e-mailed to parties of interest who have requested notification when e-mail address is available
 - f. Post on City Utility Bills when available subject to billing schedule
- H. **STEP 5:** Public Hearing conducted before the Planning Board
- I. **STEP 6:** Planning Board recommendation on amendment and public input received at the hearing are forwarded to City Council.
- J. **STEP 7:** City Council considers Planning Board recommendation and public input received at Planning Board public hearing.

- K. **STEP 8:** First Reading of Ordinance on City Council Agenda/Meeting. (Public Comments are taken on Agenda items by City Council).
- L. First and Second Reading may be combined at Council option.
- M. **STEP 9:** Second Reading of Ordinance on City Council Agenda/Meeting (Public Comments are taken on Agenda items by City Council).
- N. **STEP 10:** If adopted, the Ordinance Amending the Regulation(s) is published, and Effective 5-days after Publication Date.
- O. **STEP 11:** Copies of Revised Regulation(s) distributed to interested parties.

16.134.050 Procedure Level IV

- A. Applicability: Procedure Level IV applies to:
 - 1. Adoption of amendments to the Comprehensive Plan and its elements as provided in RCW 36.70A.035 (1)
 - 2. Adoption of new development regulations or substantive amendment of existing development regulations as provided in RCW 36.70A.035 (1).
- B. **STEP 1:** Proposed Amendment is initiated by:
 - 1. City Staff
 - 2. City Council
 - 3. Planning Board
 - 4. Member of the Public
- C. **STEP 2:** Prepare Public Information Binders for Public Review at City Hall, Reception Area, and the Sultan Branch of the Sno-Isle Regional Library. Update Binders as additional information becomes available throughout the review process.
- D. **STEP 3:** SEPA Checklist on proposed Amendment(s) is prepared by Staff/Applicant and mailed to the applicable reviewing agencies for 14-day comment period. Mailing includes:
 - 1. Determination (by SEPA Official)
 - 2. Checklist
 - 3. Proposed Amendment(s)
 - 4. Examples of reviewing agencies are
 - a. Department of Ecology
 - b. Corps of Engineers
 - c. Department of Fisheries
 - d. Snohomish County
 - e. Washington State Department of Transportation
 - f. Tulalip Tribes
 - g. Department of Community Trade and Economic Development (CTED)
- E. **STEP 4:** SEPA Determination including comment period is
 - 1. Published in the Everett Herald not less than 10 days prior to hearing (WAC 365-195-600)
 - 2. Posted at City Hall
 - 3. Posted at the Post Office
 - 4. Posted on City Web Site, and other available sites of known interest when available.
 - 5. E-mailed to Parties of Interest who have requested a notice when e-mail address is available.
 - 6. Posted in the Public Information Binder on Public Review and Public Document and Notice Table in City Hall Reception Area.

- P. **STEP 13:** City Council considers Planning Board record including staff report, all public input (written and verbal testimony), and Planning Board findings and recommendation and acts on the proposal. Proceed to STEP 14.
- Q. **STEP 14:** First Reading of Ordinance on City Council Agenda/Meeting. (Public Comments are taken on Agenda items by City Council).
- R. First and Second Reading may be combined at Council Option.
- S. **STEP 15:** Second Reading of Ordinance on City Council Agenda/Meeting (Public Comments are taken on Agenda items by City Council).
- T. **STEP 16:** If adopted, the Ordinance Amending the Regulation(s) is published, and effective 5-days after publication date.
- U. **STEP 17:** Copies of Revised Regulation(s) distributed to interested parties.

16.134.060 Unintentional Procedural Errors

As provided in RCW 36.70A.140 and WAC 365-195-600, errors in exact compliance with these established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

16.134.070 Definitions

- A. **Comprehensive Plan:** The Comprehensive Plan of the City of Sultan as provided for in RCW 36.70A
- B. **Comprehensive Plan Element:** Any amendment to a portion of the Comprehensive Plan including Appendices and supporting documents that are adopted by reference.
- C. **Development Regulations:** Ordinances and Codes adopted by the City Council that implement the Comprehensive Plan through land use regulations that establish uses or standards for development of land uses.
- D. **Docket – Comprehensive Plan:** The schedule for consideration of amendments to the Comprehensive Plan or Comprehensive Plan Elements. The docket operates on an annual basis under the following schedule:
 1. Applications for the Comprehensive Plan Docket must be submitted by April 1 of each year for consideration in that year.
 2. The Planning Board will transmit initial recommendations to the Council by July 30 of each year. The recommendations will consist of findings on the policy issues and the Planning Board recommendation on inclusion of the particular proposal on the Council's adopted version of the Docket for the year.
 3. By October 1, the Council will commit to adding the proposal to the Docket for further staff work and Planning Board action.
 4. Note: The once-per-year Annual Docket Process does not apply to amendments to Development Regulations that implement the Comprehensive Plan.
- E. **Legislative Land Use Actions:** Actions taken by the City Council that applies to the entire Community such as: amendment of the text of the Unified Development Code, or; actions that apply to significant geographic portions of the Community such as amendment of the Official Zoning Map that affects neighborhoods or larger areas.
- F. **Quasi-Judicial Land Use Actions:** Actions taken by the Hearing Examiner or other authorized hearing authority that apply to a single property or a small number of specific properties such as a conditional use or a change of zone on one or a few properties in a group.