

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-7

DATE: June 25, 2009

SUBJECT: First Reading of:
Ordinance 1050-09 Amending SMC Title 2
Ordinance 1051-09 Amending SMC Title 16
Ordinance 1052-09 Amending SMC Title 21,
Code Amendments to Remove City Council from Quasi-Judicial Land Use Process
and to clarify the titles of various responsible officials

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE: Have first reading of Ordinance 1050-09 Amending SMC Title 2, Ordinance 1051-09 Amending SMC Title 16, Ordinance 1052-09 Amending SMC Title 21 to remove the City Council from quasi-judicial decision process, vesting that responsibility in the Hearing Examiner, and clarifying the titles of various responsible officials.

STAFF RECOMMENDATION:

Have first reading of ordinances ordinances that amend Sultan Municipal Code:

- Ordinance 1050-09
- Ordinance 1051-09
- Ordinance 1052-09

for the purpose of removing the City Council from the Quasi-judicial land use process, and vesting decisions on the quasi-judicial processes in the Hearing Examiner and to clarify the titles of various responsible officials.

PLANNING BOARD RECOMMENDATION:

The Planning Board held a public hearing on the proposed amendments to Titles 2, 16, and 21, on May 5, 2009, and passed a motion recommending that the City Council adopt the amendments as proposed.

AMENDED CHAPTERS:

Title 2: Chapter 2.26, Hearing Examiner

Title 16: Chapter 16.10, Planned Unit Development
Chapter 16.18, Nonconformances
Chapter 16.28, Subdivision Regulations
Chapter 16.92, Stormwater Management Performance Standards
Chapter 16.120, Administration
Chapter 16.124, Public Hearings

Title 21: Chapter 21.04, Conditional Use Permits
Chapter 21.06, Binding Site Plans

BACKGROUND:

This activity was briefly introduced at the Planning Board/City Council Joint Meeting of November 18, 2008. Council indicated the desire for this project to proceed. The Planning Board has worked on the project over several meetings and one public hearing.

As this is a change in development regulations, the City provided notice to the Community Trade and Economic Development Department (CTED) for 60 days as required. CTED has acknowledged this action as a minor procedural amendment, and is expected to have no further input. The 60-day notice process expired on June 15, 2009. There has been no public or agency input on the proposals during the prescribed comment period.

This is a Level III amendment as provided in the recently adopted Public Participation and Notice Procedures (SMC Chapter 16.134). This procedure requires one public hearing at the Planning Board level with a recommendation to the Council (no additional public hearing is required at the Council level, although the Council can always determine to hold an additional hearing).

DISCUSSION:

Quasi-Judicial Process:

The Council has expressed interest in vesting all of the Quasi-judicial procedures in the Hearing Examiner. Quasi-judicial processes are land use actions that affect a specific property based on an application for a particular decision eg. conditional use, variance, zone map change.

Recognizing that involvement in the Quasi-judicial process has resulted in considerable confusion and duplication of effort, the Council has directed staff and the Board to construct a comprehensive review of the SMC and recommend amendments that remove the Council from the quasi-judicial process in every way that is legally allowed and appropriate. Note that the Planning Board does not engage in any quasi-judicial processes based on their authorities provided in SMC 2.17.160.

Quasi-judicial process is the part of the planning program wherein decisions are made about specific applications for uses or permits to place a land use or a new zone on a particular piece of property. As this is a very detailed and legally contentious process, most jurisdictions, including Sultan, have transferred the responsibility of quasi-judicial decision making to a professional typically called a Hearing Examiner. Title 2.26 of the Sultan Municipal Code (SMC) establishes the office of Hearing Examiner for the City.

The responsibility of the Council at this time is to act as the final decision maker in preliminary subdivision applications, binding site plan applications, nonconforming use procedures, stormwater management applications, conditional use permits, and some other procedures referred to as quasi-judicial.

When Title 2.26 was adopted, Section 2.26.010 B. and 2.26.090 transferred action on variances, conditional uses, short plats, subdivisions, and administrative appeals to the Hearing Examiner (See Attachment B). In several of these actions, however, the Examiner was charged with making a recommendation to the Council instead of making a final decision. Appeals of Examiner decisions were also filed with the Council. In this system, the Council was still exposed to all of the legal complexity and potential liability of quasi-judicial land use decision making.

Legislative Process:

Through this set of amendments the Council will be exclusively involved in legislative processes. Legislative processes are policy-level decisions which affect the community as a whole, and are not specific to one property or one particular use. Examples are adoption of Comprehensive Plan Amendments and Changes to the text of the Zoning Code (Unified Development Code).

Additional Comments on Proposed Amendments:

The code amendments necessary to accomplish this charge are located in: SMC Chapter 2.26, Hearing Examiner; Title 16, Unified Development Code; and Title 21, Other Land Uses.

There are still a few locations within these sections where the Council must be the final decision maker. These exceptions are approval of a final plat, and final approval of assessment districts for Local Improvement Districts and similar assessment or taxing decisions.

Another change made in this proposal is to make titles of certain officials agree with current titles (chiefly the title of Community Development Director).

Staff appreciates the detailed assistance of the Planning Board in preparing this draft document for Council Review.

The Council received legislative mark-up versions of the proposed amendments as part of their May 28 Agenda Packet (Item D-3).

Attachments to this agenda packet are the three adopting ordinances, one for each SMC Title being amended, accompanied by the proposed code language as it will appear in the Code.

Limitations of Current Amendments:

Note that this is a specific and focused project. It is only intended to remove the Council from quasi-judicial processes. There is extensive work required to revise the code to bring it up to current standards. That full-scale work will follow this single-topic project.

ALTERNATIVES:

The Council could choose from the following alternatives to the recommended action:

1. Not adopt the proposed amendments, thereby retaining the role as the final decision maker in the various quasi-judicial processes after receiving recommendations from the staff and the Hearing Examiner.
2. Adopt some of the proposed amendments, granting final decision making to the Hearing Examiner, and retaining the Council as the decision maker for selected quasi-judicial processes.

RECOMMENDATION:

Have first reading of ordinances ordinances that amend Sultan Municipal Code:

- Ordinance 1050-09
- Ordinance 1051-09
- Ordinance 1052-09

for the purpose of removing the City Council from the Quasi-judicial land use process, and vesting decisions on the quasi-judicial processes in the Hearing Examiner and to clarify the titles of various responsible officials.

ATTACHMENTS:

- Attachment A: Ordinance 1050-09, Amendment to SMC Title 2
Attachment B: Ordinance 1051-09, Amendment to SMC Title 16
Attachment C: Ordinance 1052-09, Amendment to SMC Title 21

**CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1050-09**

**AN ORDINANCE OF THE CITY OF SULTAN,
WASHINGTON, ADOPTING AMENDMENTS TO SULTAN
MUNICIPAL CODE TITLE 2, HEARING EXAMINER,
REMOVING THE CITY COUNCIL FROM QUASI-JUDICIAL
PROCESS, VESTING QUASI-JUDICIAL PROCESS IN THE
HEARING EXAMINER, CLARIFYING THE TITLES OF
VARIOUS RESPONSIBLE OFFICIALS; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Sultan has adopted the Hearing Examiner system for review of various land use applications as authorized by Chapter 35A-63 RCW, and

WHEREAS, Sultan Municipal Code (SMC) Chapter 2.26.020 provides that the Hearing Examiner shall “interpret, review and implement land use regulations in accordance with the procedures set forth herein” for all land use matters of a Quasi-Judicial nature, and

WHEREAS, Portions of the SMC, including Chapter 2.26 require amendment to fully implement the mandate of Chapter 2.26.020, and

WHEREAS, The Planning Board held a Public Hearing on the amendments required to fully implement the Hearing Examiner system on April 21, 2009, and received no testimony in opposition to the adoption of the proposed amendments, and

WHEREAS, The Planning Board, recommended that the City Council adopt the proposed amendments, and

WHEREAS, the City provided the Department of Community Trade and Economic Development (CTED) the required 60-day notice, and

WHEREAS, the CTED notice period for public and agency input expired on June 15 with no input received, and

WHEREAS, this amendment is a Level III amendment to Development Regulations, the procedures for which require a Hearing at the Planning Board and do not require an additional Hearing at the City Council, and

WHEREAS, the City Council reviewed the proposed amendments during a discussion agenda item at its May 28, 2009 meeting and determined to proceed with the Planning Board’s recommended adoption process without a further Public Hearing at the Council level, and

WHEREAS, it is the intent of the Council to fully implement the Hearing Examiner system for Quasi-Judicial land use procedures,

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

Section 1. The CITY OF SULTAN MUNICIPAL CODE CHAPTER 2.26, HEARING EXAMINER, is hereby AMENDED AS FOLLOWS:

Chapter 2.26

HEARING EXAMINER

Sections:

2.26.010	Purpose
2.26.020	Creation of Hearing Examiner Position
2.26.030	Appointment
2.26.040	Qualifications
2.26.050	Removal
2.26.060	Freedom from Improper Influence
2.26.070	Conflict of Interest
2.26.080	Rules
2.26.090	Duties of the Examiner – Applications
2.26.100	Reports of City Departments
2.26.110	Public Hearing
2.26.120	Examiner's Decision
2.26.125	Reconsideration of Examiner's Decision
2.26.130	Notice of Examiner's Decision
2.26.140	Appeal from Examiner's Decision
2.26.180	Local Improvement District Assessment Roll Hearings
2.26.190	Variance Criteria

2.26.010 Purpose.

The purpose of this Chapter is to establish a system of Land Use Regulatory Hearings which will satisfy the following basic needs:

- A. A more prompt opportunity for a Hearing and decision on alleged violations of land use regulations, and such other regulations as may be assigned to the Hearing Examiner;
- B. To provide an efficient and effective system for deciding Quasi Judicial actions including Conditional Use Applications, Variance Applications, Preliminary Subdivision Applications, Appeals from Administrative Decisions, and various other procedures as specified in this Code (RCW 58.17.330); and
- C. To help ensure procedural due process and appearance of fairness by holding such Hearings before a neutral party, competent in the fields of land use and procedural requirements. (Ord. 550, 1990)

2.26.020 Creation of Hearing Examiner Position.

Pursuant to Chapter 35A.63 RCW, the office of Hearing Examiner, hereinafter referred to as Examiner, is created. All land use matters of a Quasi-Judicial nature, not requiring a modification of any Ordinance or legislation shall be referred to the Examiner who shall interpret, review and implement land use regulations in accordance with the procedures set forth herein. (Ord. 701, 1999; Ord. 550, 1990)

2.26.030 Appointment.

The Hearing Examiner shall be appointed by the mayor from a list of qualified persons approved by the Council. The Council shall approve the compensation of the Hearing Examiner as with other professional and consultant positions. (Ord. 701, 1999; Ord. 550, 1990)

2.26.040 Qualifications.

Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct Administrative or Quasi-Judicial Hearings on regulatory enactments and to discharge the other functions conferred upon them. Examiners shall hold no other elective or appointive office of position in the City of Sultan. (Ord. 550, 1990)

2.26.050 Removal.

The Mayor with concurrent majority vote of the City Council may remove an Examiner from office for cause. (Ord. 550, 1990)

2.26.060 Freedom from Improper Influence.

No person, including City officials, elected or appointed, shall attempt to influence an Examiner in any matter pending before him, except at a Public Hearing duly called for such purpose, or to interfere with an Examiner in the performance of his duties in any other way; provided, that this Section shall not prohibit the City's attorney from rendering legal service to the Examiner upon request. (Ord. 550, 1990)

2.26.070 Conflict of Interest.

No Examiner shall conduct or participate in any Hearing, Decision, or Recommendation in which the Examiner has a direct or indirect substantial financial or familial interest or concerning which the Examiner has had substantial prehearing contacts with proponents or opponents. Nor, in considering an Examiner's recommendation, shall any member of the Council who has such an interest or has had such contacts participate in consideration thereof.

2.26.080 Rules.

The Examiner shall have the power to prescribe rules for the scheduling and conduct of Hearings and other procedural matters related to the duties of his office. Such rules may provide for cross-examination of witnesses. (Ord. 550, 1

2.26.090 Duties of the Examiner – Applications.

- A. The Examiner shall receive and examine available information, conduct fair and impartial Public Hearings, prepare a record thereof, and enter findings, conclusions, recommendations, or decisions as provided throughout the Sultan Municipal Code.
- B. The Examiner is empowered to act in lieu of the Board of Adjustment, and such other officials, boards or commissions as may be assigned. Whenever existing Ordinances, Codes or policies authorize or direct the Board of Adjustment, or other officials, boards or commissions to undertake certain activities which the Examiner has been assigned, such Ordinances, Codes or policies shall be construed to refer to the Examiner.
- C. The Hearing Examiner is empowered consistent with SMC 2.26.120(D) and rules adopted by the Hearing Examiner to reconsider decisions or recommendations of the Hearing Examiner.

2.26.100 Reports of City Departments.

On any land use issue coming before the Examiner, the Community Development Director shall coordinate and assemble the reviews of other City departments, governmental agencies, and other interested parties and shall prepare a report summarizing the factors involved and the Planning Board and or City Council findings and recommendations. At least seven (7) calendar days prior to the scheduled Hearing, the report shall be filed with the Examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof

shall be provided to interested parties upon payment of reproduction costs. In the event that information to be provided by the applicant or other parties outside of City control has not been provided in sufficient time for filing seven (7) days in advance of the Hearing, the Examiner may reschedule the Hearing and notify interested parties. (Ord. 550, 1990)

2.26.110 Public Hearing.

- A. Before rendering a decision or recommendation on any application, the Examiner shall hold at least one Public Hearing thereon.
- B. Notice of the time and place of the Public Hearing shall be given as provided in the ordinance governing the application. If none is specifically set forth, such notice shall be given no less than 10 calendar days before the Public Hearing.
- C. The Examiner shall have the power to prescribe rules and regulations for the conduct of Hearings under this chapter and also to administer oaths, and preserve order. (Ord. 821-03 § 1; Ord. 550, 1990)

2.26.120 Examiner's Decision.

- A. The Hearing Examiner shall render a written decision within 10 working days of the conclusion of a Hearing, unless the applicant or appellant agrees to a longer period in writing. The decision shall include at least the following:
 - 1. Findings of fact and conclusions of law based upon and supported by the record;
 - 2. A decision on the application, or the appeal, to grant, deny, or grant with such conditions, modifications, and restrictions as the Examiner finds reasonable to make the application or appeal compatible with its environment, the Sultan Municipal Code, the City of Sultan Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include, but are not limited to additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds;
 - 3. A statement of the date the decision will become final.

2.26.125 Reconsideration of Examiner's Decision.

- A. All decisions or recommendations of the Hearing Examiner are subject to reconsideration, unless reconsideration is waived. Reconsideration is waived unless within seven calendar days of the date of mailing of the decision or recommendation, the applicant, the City, or a party of record submits a written request for reconsideration in accordance with rules issued by the Hearing Examiner.
- B. Pending reconsideration by the Hearing Examiner, a decision shall not be deemed final for the purpose of commencement of the period of time in which to commence an appeal.
- C. If reconsideration is waived because no timely request for reconsideration is made, the initial decision of the Hearing Examiner, subject to any right of appeal, shall be deemed final as of the eighth calendar day after the date of mailing of the decision.
- D. If a timely request for reconsideration is made, the Hearing Examiner shall grant or deny reconsideration within 10 working days of the date of receipt of the request for reconsideration.

2.26.130 Notice of Examiner's Recommendation or Decision.

Not later than three working days following the rendering of a written decision, copies thereof shall be mailed to the applicant and to other parties of record in the case. "Parties of record" shall include the applicant and all other persons who specifically request notice by signing a

register provided for such purpose at the Public Hearing, or otherwise provide written request for such notice.

2.26.140 Appeal from Examiner's Decision.

Examiner's decisions may be appealed to Superior Court by a party with standing in accordance with the procedures of Chapter 36.70C RCW, or other court of competent jurisdiction as provided by law.

2.26.180 Local Improvement District Assessment Roll Hearings.

- A. As authorized by RCW 35.44.070, the City Council hereby provides for delegating the duty of conducting Public Hearings for the purpose of considering and making recommendations on final assessment rolls and the individual assessments upon property within local improvement districts to a Hearing Examiner appointed under this section, and the Hearing Examiner is directed to conduct such Hearings and make those recommendations to the City Council.
- B. All objections to the confirmation of the assessment roll shall be in writing and identify the property, be signed by the owners and clearly state the grounds of the objection. Objections not made within the time and in the manner prescribed and as required by law shall be conclusively presumed to have been waived.
- C. The Hearing Examiner shall conduct the Hearing to be commenced at the time and place designated by the City Council, cause an adequate record to be made of the proceedings, and make written findings, conclusions and recommendations to the City Council following the completion of such Hearings, which may be continued and re-continued as provided by law whenever deemed proper by the Hearing Examiner, and the City Council shall either adopt or reject the recommendations of the Hearing Examiner.
- D. The recommendations of the Hearing Examiner shall be that the City Council correct, revise, lower, change or modify the roll or any part thereof, or set aside the roll in order for the assessment to be made de novo, or that the City Council adopt or correct the roll or take other action on the roll as appropriate, including confirmation of the roll without change. The recommendations of the Hearing Examiner shall be filed with the City clerk and be open to public inspection. All persons whose names appear upon the recommended assessment roll who timely filed written objections to their assessments shall receive mailed written notification of their recommended assessments.
- E. Any persons who shall have timely filed objections to their assessments may appeal the recommendations of the Hearing Examiner regarding their properties to the City Council by filing written notice of such appeal with the City clerk within 10 calendar days after the date of mailing of the Hearing Examiner's recommendations.
- F. The appeal shall be based exclusively upon the record made before the Hearing Examiner and shall be considered by the City Council at a public meeting. No new evidence may be presented. Arguments on appeal shall be either oral or written as the City Council may order.
- G. The City Council shall adopt or reject the recommendations of the Hearing Examiner at a public meeting, after considering any appeals, and shall act by ordinance in confirming the final assessment roll.
- H. Any appeal from a decision of the City Council regarding any assessment may be made to the superior court within the time and in the manner provided by law.

- I. The procedures set forth in this section are independent of and alternative to any other Hearing or review processes heretofore or hereafter established by the City, and shall govern the conduct and review of final assessment Hearings conducted before Hearing Examiners and related proceedings when authorized by the City Council. (Ord. 775-01 § 1)

2.26.190 Variance Criteria.

No application for a variance shall be granted unless the Examiner finds:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and
- B. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and
- C. That such variance is necessary:
1. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and
 2. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement.

Section 2. 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 3. 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

**CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1051-09**

**AN ORDINANCE OF THE CITY OF SULTAN,
WASHINGTON, ADOPTING AMENDMENTS TO SULTAN
MUNICIPAL CODE TITLE 16, UNIFIED DEVELOPMENT
CODE, REMOVING THE CITY COUNCIL FROM QUASI-
JUDICIAL PROCESS, VESTING QUASI-JUDICIAL
PROCESS IN THE HEARING EXAMINER, CLARIFYING
THE TITLES OF VARIOUS RESPONSIBLE OFFICIALS;
AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Sultan has adopted the Hearing Examiner system for review of various land use applications as authorized by Chapter 35A-63 RCW, and

WHEREAS, Sultan Municipal Code (SMC) Chapter 2.26.020 provides that the Hearing Examiner shall “interpret, review and implement land use regulations in accordance with the procedures set forth herein” for all land use matters of a quasi-judicial nature, and

WHEREAS, Portions of the SMC, including Title 16, require amendment to fully implement the mandate of Chapter 2.26.020, and

WHEREAS, The Planning Board held a public hearing on the amendments required to fully implement the Hearing Examiner system on April 21, 2009, and received no testimony in opposition to the adoption of the proposed amendments, and

WHEREAS, The Planning Board, recommended that the City Council adopt the proposed amendments, and

WHEREAS, the City provided the Department of Community Trade and Economic Development (CTED) the required 60-day notice, and

WHEREAS, the CTED notice period for public and agency input expired on June 15 with no input received, and

WHEREAS, this amendment is a Level III amendment to Development Regulations, the procedures for which require a hearing at the Planning Board and do not require an additional hearing at the City Council, and

WHEREAS, the City Council reviewed the proposed amendments during a discussion agenda item at its May 28, 2009 meeting and determined to proceed with the Planning Board’s recommended adoption process without a further public hearing at the Council level, and

WHEREAS, it is the intent of the Council to fully implement the Hearing Examiner system for quasi-judicial land use procedures,

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

Section 1. The CITY OF SULTAN MUNICIPAL CODE TITLE 16, UNIFIED DEVELOPMENT CODE, is hereby AMENDED AS FOLLOWS:

**Chapter 16.10
PLANNED UNIT
DEVELOPMENT DISTRICT**

Sections:

16.10.010	Purpose and Goals of PUD's
16.10.020	PUD as an Overlay Zone
16.10.030	Types of PUD's
16.10.040	Master Plans
16.10.050	Who May Apply
16.10.060	Team Development, Pre-Application Conference, and Neighborhood Meeting
16.10.070	Preliminary PUD Application – Contents and Fees
16.10.080	Preliminary PUD Process Review
16.10.090	Authority to Approve Condition or Deny Preliminary PUD
16.10.100	Criteria for Location and Approval – Retail Center PUD's
16.10.110	Criteria for Location and Approval – Residential PUD's
16.10.120	Residential PUD Density Increases and Development Standards
16.10.130	Reserved
16.10.140	Open Space Requirements
16.10.150	Expiration of Preliminary PUD
16.10.160	Final PUD Review and Approval
16.10.170	Final PUD Acknowledgments – Filing – Copies – Recording
16.10.180	Building Permits
16.10.190	Minor Changes and Amendments to Final PUD
16.10.200	Expiration of Final PUD
16.10.210	Periodic review of Building Permits for consistency with Approved PUD

16.10.010 Purpose and Goals of PUD's.

- A. The Planned Unit Development (PUD) District is an alternative to conventional Land Use Regulations, combining use, density and site plan considerations into a single process. The PUD is intended to be a Zoning Map Designation, applied to a parcel of land only after a site-specific and project-specific review of proposed land uses, densities and site plan considerations to ensure compliance with the provisions of the adopted Sultan Comprehensive Plan, Development Regulations, the Growth Management Act, specifically RCW 36.70A.090 providing for Innovative Land Use Management Techniques, and to ensure compatibility of design with existing, adjacent uses.
- B. The PUD District is specifically intended to encourage diversification in the use of land insofar as what is allowed in the relevant sections of the Comprehensive Plan and to allow flexibility in site design in all specified Zoning Districts with respect to spacing, heights and setbacks of buildings, densities, critical areas, open space, parking, accessory uses, landscaping, and circulation elements; innovation in residential

development that results in the availability of adequate affordable housing opportunities for varying income levels; more efficient use of land and energy through smaller utility and circulation networks; pedestrian considerations; and development patterns in harmonious relationships with nearby areas and in consideration and support of the goals and objectives of the Comprehensive Plan for the City.

- C. The PUD chapter is further intended to implement the planned retail center provisions of the Comprehensive Plan, providing the site-specific and project-specific review required by the Comprehensive Plan retail policies prior to locating the planned retail centers as identified in the Comprehensive Plan.
- D. Because of the size of sites in proportion to their critical and natural features, the provisions of this chapter provide flexibility in the use of land and the placement and size of buildings in order to better utilize the special features of sites and to obtain a higher quality of development. PUD applicants are motivated to incorporate high levels of amenities, which meet public objectives for protection and preservation of our critical areas, site enhancing natural features, and preservation of open space amenities through the use of bonus density incentives. These will provide for urban densities while encouraging developments which provide a desirable and stable environment in harmony with that of the surrounding areas. (Ord. 793-02 § 1)

16.10.020 PUD as an Overlay Zone.

The PUD, once approved, shall constitute an “overlay” zone and shall be labeled as such on the official zoning map of the City of Sultan. For each property that receives a PUD approval, the zoning map shall also identify a “fallback” underlying zone, which in most cases shall be the existing zoning designation of the property at the time of PUD Application. This fallback underlying zoning shall govern development of the site in the event the approved PUD expires without development of the approved project. The overlay PUD shall be identified within parentheses “()” on the official zoning map of the City of Sultan. At such time as the approved PUD is completely developed, the fallback zoning designation shall be removed from the official zoning map and the property shall be principally zoned one of the type of PUD Zones listed in SMC 16.10.030. (Ord. 793-02 § 1)

16.10.030 Types of PUD’s.

The following types of PUD’s are hereby established as overlay zones:

A. Retail Center PUD’s. These PUD Zones are created to implement the planned retail centers policies of the Comprehensive Plan. A Retail Center PUD may only be approved if the site is located within the area identified in the Comprehensive Plan for a planned retail center. It may occur with any existing underlying zone, as explained in SMC 16.10.020, and does not require one of the commercial Zoning Districts. One type of Retail Center PUD’s is identified in the Comprehensive Plan:

1. PUD-Planned convenience retail (PUD-PCvR).

B. Residential PUD’s. These PUD zones are created to provide for greater flexibility in residential design from underlying zoning standards, to encourage provision of affordable housing and to allow for a limited amount of increased residential density if PUD review is completed. Each residential PUD shall have a “base density” determined by the maximum density permitted by the underlying residential zoning designation. Bonus density above the base density may then be approved, based on the density

bonus considerations described in SMC 16.10.120. A PUD-MF shall only be permitted in areas identified as appropriate for multifamily development in the Comprehensive Plan and adopted subarea plans or neighborhood plans. A PUD-SF shall only be permitted in areas identified as appropriate for single-family development in the Comprehensive Plan. A PUD-MHP shall only be permitted on properties with underlying LMD and MD Zoning.

There are three types of residential PUD's:

1. PUD-Single-family (PUD-SF);
2. PUD-Multifamily (PUD-MF);
3. PUD-Manufactured home/manufactured home park (PUD-MHP). (Ord. 793-02 § 1)

16.10.040 Master Plans.

- A. When the total project is to be developed in phases and the Applicant does not expect the phases to be developed within the time frames specified for expiration of Preliminary and Final PUD's, the Applicant may file a General Master Plan, including essential proposed land use information (land use, densities, site design, adjacent uses, circulation, utility corridors and alignments, wetlands) for review and approval by the City pursuant to the procedures of this Chapter, instead of submitting a Preliminary PUD for the entire project. The Master Plan shall identify the geographic area, land uses, and density of each phase. The Master Plan shall also be accompanied by a phasing plan describing the general boundaries of each phase and the expected date at which a detailed site plan and Preliminary PUD Application for that phase will be submitted. No project to be developed in phases may exceed five (5) years from the time the Master Plan is approved until the Final Plan is submitted.
- B. The Master Plan shall be reviewed by the Hearing Examiner, using the same procedures and same criteria as a Preliminary PUD, recognizing the lesser level of detail included in the Master Plan Application.
- C. Subsequent Preliminary PUD Applications for each phase of the PUD approval shall be consistent with any Approved Master Plan and shall contain all of the detailed information and materials specified in SMC 16.10.070. (Ord. 793-02 § 1)

16.10.050 Who may Apply.

- A. PUD projects may be initiated by:
 1. The Owner or duly authorized agent(s) of all property involved, if under one ownership; or
 2. Jointly by all Owners or duly authorized agent(s) having title to all the property in the area proposed for the PUD project, if there is more than one owner; or
 3. A Governmental Agency.
- B. The PUD Applications shall be in the name or names of the recorded owner or owners of property included in the development. The Applications initially may be filed by the holder(s) of an equitable interest in or option on such property, but the Applicant must evidence either fee title or the purchaser's interest in a binding sales agreement before final approval of the applicant's plan or the recorded owner or owners must have given written consent satisfactory to the City. (Ord. 793-02 § 1)

16.10.060 Team Development, Pre-Application Meeting, and Neighborhood Meeting.

- A. For the purposes of expediting applications and reducing development costs, the City of Sultan offers and encourages a “Team Development” general information meeting. This meeting will provide input from relevant department Staff regarding requirements needed for a proposed project; such as land use, site design, required improvements, and conformance with the Comprehensive Plan, Zoning Ordinance and Subdivision Code. This Team Development approach offers a forum where information can be shared about the site and Staff can guide the applicant through specific requirements prior to developing a detailed site plan. This informal process will help alert developers to potential issues prior to expending resources on plans that may need alterations to meet City regulations. The meeting will also provide details on the information needed for the required Pre-Application Meeting.
- B. Prior to filing any Application, the Applicant shall schedule, and the City shall conduct, a Pre-Application Conference, pursuant to the provisions of SMC 16.28.280 (A). To schedule a Pre-Application Conference, the Applicant shall submit to the Planning Director all required application materials, including forms, maps, site plans, landscaping plans, elevations, etc., so the City can advise the Applicant whether there is sufficient information to constitute a complete application and to review the proposal in relationship to the Comprehensive Plan, approved subarea plan or neighborhood plan for the area, and specific City development objectives, policies, and plans for the area.
- C. Prior to submission of a formal PUD Application and after the completion of the Pre-Application Meeting with the City, the applicant is encouraged to conduct a Neighborhood Meeting to review the proposed project with property owners within 300-feet of the subject property. These meetings are mandatory for Retail Center PUD’s and all Residential PUD’s over 50-dwelling units. If such neighborhood meeting is held, comments received at the meeting should be submitted to the City for consideration with the PUD Application.
- D. If, as a result of the Neighborhood Meeting, residents have questions or require additional information concerning the proposed PUD, they may request an Informal meeting with the Planning Director or the applicant by contacting the Planning Department. (Ord. 793-02 § 1)

16.10.070 Preliminary PUD Application – Contents and Fees.

- A. After the Pre-Application Meeting, the applicant may file an application for a Preliminary PUD with the Planning Director together with the application fee and documents meeting the requirements set out in subsections B through G of this Section. An applicant may submit applications for:
 - 1. Master Plan only or simultaneously with the preliminary PUD for the first phase;
 - 2. Preliminary PUD only;
 - 3. Preliminary and Final PUD simultaneously, provided all information required under SMC 16.10.160 (B) is submitted;
 - 4. Amendment to a PUD.
- B. The PUD Application shall be accompanied by a nonrefundable fee as set forth in the City’s current Fee Schedule to reimburse the City of Sultan for the costs of reviewing the application. Further provided, the applicant shall be responsible for additional processing costs incurred by the City in the event of additional Staff time, Consultant Services, and Public Hearing costs over and above the initial application fee. All additional costs shall

be paid within 30-days of notice by the City. Failure to provide payment to the City shall terminate processing of the application.

C. Written documents required with a PUD Application are as follows:

1. Provide application forms:
 - a. Counter complete checklist, as prepared by the Community Development Department;
 - b. PUD Application form;
 - c. Application for Preliminary Plat or short plat, if required by the planning director and City engineer; however, it will normally be processed with the final PUD Application;
 - d. Application for a substantial development permit is required by the shoreline master program ordinance;
 - e. SEPA environmental checklist pursuant to Chapter 43.21C RCW;
 - f. Ownership statement;
2. Provide legal description of the total site proposed for development, including a statement of present and proposed ownership and present and proposed zoning;
3. Provide statement of objectives to be achieved by the PUD through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant including consistency with the goals, objectives and criteria of the Comprehensive Plan and a detailed statement summarizing in written and graphic form how the development complies with the applicable provisions of this chapter;
4. Provide development schedule indicating the approximate date when construction of the PUD or phases of the PUD can be expected to begin and be completed based on the estimated date of construction plan approval;
5. Provide statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the PUD, such as land areas, dwelling units, etc.;
6. Provide quantitative data for the following:
 - a. Total number and type of dwelling units;
 - b. Parcel size;
 - c. Proposed lot coverage of buildings and structures;
 - d. Approximate gross and net residential densities;
 - e. Total amount of open spaces as defined by Sultan zoning code, including a separate figure for usable open space;
 - f. Total amount of nonresidential construction, including a separate figure for commercial or institutional facilities;
7. Provide evidence of sewer availability;
8. Provide evidence of adequate water supply as required by RCW 19.27.097;
9. For retail PUD's and for that portion of any residential PUD that contains proposed retail or other commercial uses intended to serve the residents of the PUD, a market analysis that includes the following information:
 - a. Provide service area, if the proposal is a planned retail center;
 - b. Provide service area population, present and prospective, for the planned retail center or provide the projected population in the residential PUD for nonresidential uses in a residential PUD;
 - c. Show evidence of effective buying power in such service area for a planned retail center or effective buying power of the residents of the PUD for nonresidential uses in a residential PUD;
 - d. Show the net potential buying power for the proposed planned retail uses or the nonresidential uses in the residential PUD and a recommendation regarding the types and sizes of uses;

10. A municipal service economic impact assessment is required for all residential PUD's over 50 dwelling units and all other PUD's over five acres. The purpose of this section is to assure that PUD approvals are not granted unless all facilities are evaluated for capacity. Fiscal impacts must be identified as they affect:
 - a. Parks;
 - b. Roads;
 - c. Schools;
 - d. City staffing levels;
 - e. Library;
 - f. Fire;
 - g. Water lines;
 - h. Sewer lines;
 - i. Drainage.

The fiscal analysis must evaluate and show existing levels of service, and how the proposed project will impact the existing levels of services, and how sufficient quantities will be available to service the proposed new development;
 11. Provide a copy of the summary of the Pre-Application Meeting and all information requested during the Pre-Application Meeting;
 12. Provide, if required by SMC 16.10.060 (C), comments received at the neighborhood meeting.
- D. Master Plan. If a master plan is proposed for development of the PUD in phases, the master plan shall contain a general description of and a conceptual site plan showing proposed land uses, densities, site design, adjacent uses, circulation, utility corridors and alignments, and wetlands or other physical development constraints for the total project visualized by the applicant. Where the total project is to be developed in phases, the master plan shall identify the geographic area, land uses, and density of each phase. The master plan shall present a broad but cohesive and complete overview of the project.
- E. Site plan and supporting maps necessary to show the major details of the proposed PUD (which may be a single phase of a master plan) are required with a PUD Application, containing the following minimum information on one or more drawings:
1. The existing site conditions, including contours at five-foot intervals, watercourses, wetlands, unique natural features, steep slopes, and forest cover;
 2. Proposed lot sizes, lot lines and plot designs;
 3. The location, floor plans and building elevations, floor area size and building envelopes of all existing and proposed buildings, structures and other improvements, including maximum heights, types of dwelling units, typical lot landscaping plans, density per type and nonresidential structures including commercial facilities;
 4. The location and size in acres or square feet of all areas to be conveyed, dedicated or reserved as common, usable, conservation, buffer, or constrained open spaces, public parks, recreational areas, school sites and similar public and semipublic uses;
 5. The existing and proposed circulation system of arterial, collector and local streets, including off-street parking areas, service areas, loading areas, transit stops existing and proposed and major points of access to public rights-of-way, including major points of ingress and egress to the development. Notations of proposed ownership, public or private, should be included where appropriate (detailed engineering drawings of cross-sections and street standards should be handled in the final development stage);
 6. The existing and proposed pedestrian and bike circulation system, including its interrelationships with the vehicular circulation system, consistency with the City's Comprehensive Plan and indicating proposed solutions to points of conflict;

7. The existing and general plans for utility systems, including sanitary sewers, storm sewers and water, electric, gas, cable television, fiber optic conduits, telephone lines, solid waste, and lighting;
 8. A general landscape plan indicating the treatment of materials used for private and common, usable, or conservation open space and buffers. This landscape plan should be in a general schematic form at this stage;
 9. Enough information on land areas adjacent to the proposed PUD to indicate the relationships between the proposed development and existing and proposed adjacent areas, including land uses, zoning classifications, densities, circulation systems, public facilities and unique natural features of the landscape;
 10. The proposed treatment and design of the perimeter of the PUD, including materials and techniques used such as screens, landscape buffers, fences and walls;
 11. A proposed comprehensive sign plan encouraging the integration of signs into the framework of the building or buildings on the property should be included with the final PUD Application;
 12. The general design of all accessory uses on the property such as all private and public fencing, recreation facilities, service areas, critical areas fencing and signage, and enhancement areas.
- F. Any additional information, as required by the planning director, necessary to evaluate the proposed preliminary PUD's compliance with the criteria in SMC 16.10.100 (retail PUD's), SMC 16.10.110 (residential PUD's) i.e., tree preservation plan, lighting plan, traffic study, etc.
- G. Provisions for maintenance of all open spaces or common property, including conditions whereby the City may enforce any provisions or requirements needed to insure the meeting of PUD objectives. (Ord. 793-02 § 1)

16.10.080 Preliminary PUD Process Review.

- A. The preliminary PUD Application shall be reviewed by the Hearing Examiner pursuant to the provisions of Chapter 2.26 SMC. All procedures for completeness, for administrative, Hearing Examiner review, and for notices of Application, hearing, and decision shall be governed by those provisions of the municipal code.
- B. SEPA review shall be conducted concurrently with the PUD Application as provided in Chapter 17.04 SMC. (Ord. 793-02 § 1)

16.10.090 Authority to Approve, Condition, or Deny Preliminary PUD.

- A. The Hearing Examiner may approve, deny, or approve with modifications or conditions deemed reasonable and necessary to protect the public interest, mitigate impacts of the proposed development, and to ensure compliance with the standards and criteria of this chapter and the policies of the Comprehensive Plan.
- B. The Hearing Examiner decision shall include, at a minimum, findings and conclusions regarding the preliminary PUD's compliance with the criteria for location and approval for the particular type of preliminary PUD listed in SMC 16.10.100 (retail PUD's), SMC 16.10.110 (residential PUD's). A preliminary PUD shall be recommended for approval if, together with reasonable modifications or conditions, the project is determined to comply with the requirements of these sections. A preliminary PUD shall be recommended for denial if, even with reasonable modifications or conditions, the project is determined to not comply with the requirements of these sections.

- C. Any decision of the Hearing Examiner on the preliminary PUD shall be final. This decision may be appealed to superior court, pursuant to the requirements of Chapter 36.70C RCW and SMC 16.120.050. (Ord. 793-02 § 1)

16.10.100 Criteria for Location and Approval – Retail Center PUD’s.

A preliminary Retail Center PUD shall only be approved if, with reasonable modification and/or conditions, the City finds that the proposed preliminary PUD complies with the following criteria for location, use and design, for each of the identified types of PUD’s.

- A. PUD-PCvR – Planned Convenience Retail.
1. Comprehensive Plan. The proposed preliminary PUD-PCvR site must be identified as having potential for a planned convenience retail center in the Comprehensive Plan’s retail policies or an adopted subarea or neighborhood plan. PUD-PCvRs can only be located in the general vicinity mapped in the Comprehensive Plan map and where it meets the specific location criteria.
 2. Other Location Criteria.
 - a. The site is located on a collector street and the site is also located with respect to streets or other transportation facilities such that these streets and transportation facilities can provide direct access to the PUD-PCvR without requiring traffic to use minor local access streets in residential neighborhoods. Street types are defined in the subdivision regulations, Chapter 16.28 SMC.
 - b. The site is located at least one mile from any other existing or zoned convenience retail center and any other retail center.
 - c. Adjacent properties are not zoned for retail development or are not currently developed with retail uses, unless these adjacent properties are proposed to be incorporated into the PUD-PCvR.
 - d. The market analysis submitted with the application demonstrates a minimum population of 1,000 within one mile from the site.
 - e. The site is located such that it can connect to an existing off-site pedestrian and bicycle circulation system to facilitate non-motor vehicle access to the PUD-PCvR.
 - f. The PUD-PCvR is located in relation to public services, sanitary sewers, water lines, fiber optic conduit, storm and surface drainage systems, and other utility systems and installations such that neither extension nor enlargement of such systems resulting in higher net public cost or earlier incursion of public costs will be required.
 - g. The PUD-PCvR is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area.
 - h. As an alternative to subsections (C)(2)(f) and (g) of this section, the developers of the PUD-PCvR can:
 - i. Provide private utilities, facilities or services approved by the public agencies which would normally provide such utilities, facilities or services as substituting on an equivalent basis and assure their satisfactory continuing operation and maintenance; or
 - ii. Make provision, acceptable to the City, for offsetting any added net public cost or early commitment of public funds necessitated by such development; or
 - iii. Demonstrate, to the satisfaction of the City, that the anticipated increases in public revenue from the PUD-PCvR will more than

adequately cover any anticipated increase in public costs for installation, operation, and maintenance.

3. Compatibility Criteria/Mitigation of Impacts on Adjacent Uses.
 - a. Delivery routes for commercial traffic do not have to use minor local access streets in residential neighborhoods.
 - b. The site is of sufficient size to generally mitigate impacts of the proposed retail uses within the PUD-PCvR site itself, including the provision of adequate screening, setbacks and other buffers to minimize noise, light and glare impacts from the retail uses.
 - c. The impacts from light and glare can be mitigated on-site through lighting design and location and/or screening and separation, so that the off-site impacts of light and glare are generally consistent with the light and glare impacts from existing adjacent uses.
 - d. Noise impacts from the PUD-PCvR can be mitigated on-site such that state noise standards can be met.
 - e. The PUD-PCvR is designed and located so as not to substantially interfere with the operation and use of existing parks and schools in the vicinity of the site.
 - f. Building scale in the PUD-PCvR shall not exceed the requirements of the development standards in subsection (C)(5) of this section.
4. Permitted Uses. The following uses shall be permitted in a PUD-PCvR:
 - a. Convenience retail establishments such as small grocery stores, pharmacies, television, electronics and appliance and small specialty shops;
 - b. Small professional offices and business services, not to exceed 5,000 square feet;
 - c. Personal services such as barber shops, beauty shops, and bakeries;
 - d. Preschools and day nursery facilities;
5. Development Standards. PUD-PCvR development shall comply with the following development standards:
 - a. Height. The maximum height of any structure in a PUD-PCvR shall be 35 feet.
 - b. Maximum size of retail site: two acres.
 - c. Retail Square Footage. The total gross square footage for retail uses shall not exceed 8,000 square feet.
 - d. Yard and Setback Requirements. There shall be no minimum yard or setback requirements; provided, the PUD-PCvR shall be reviewed and the proposed site plan conditioned to ensure sufficient separation and buffers from existing adjacent uses to mitigate impacts from the PUD development, to encourage pedestrian and bicycle access to the PUD development without needing to access the development through a parking lot without pedestrian paths and to present a streetscape that is of a scale consistent with adjacent development.
 - e. Open Space Requirements. A minimum of 20 percent of the gross site area shall be retained in one or more types of open space as defined in SMC 16.10.140.
 - f. Perimeter buffer: a minimum 30-foot buffer zone in those areas of the PUD-PCvR adjacent to LMD, MD and HD residential districts. Larger buffers may be required if necessary to meet the compatibility criteria. This buffer must be kept free of buildings or structures and must be landscaped, screened or protected by natural features so that adverse impacts on surrounding areas are minimized. These buffers may be included in required open space, as specified in SMC 16.10.140.

- g. Parking. The requirements of Chapter 16.60 SMC shall apply to a PUD-PCvR.
- h. Signs. The requirements of Chapter 22.06 SMC shall apply to a PUD-PCvR. All signs in a PUD-PCvR shall conform to a master sign plan that shall be considered and approved with the development plan.
- i. Landscaping. The requirements of Chapter 16.04 SMC shall apply to a PUD-PCvR, as a minimum; provided that additional landscaping may be required to mitigate impacts to adjacent uses and to meet the compatibility criteria for approval from this section. (Ord. 793-02 § 1)

16.10.110 Criteria for Location and Approval – Residential PUD’s.

A preliminary residential PUD shall only be approved if, with reasonable modification and/or conditions, the City finds that the proposed preliminary PUD complies with the following criteria for location, use, and design, for each of the identified types of PUD’s.

- A. PUD-Multifamily (PUD-MF).
 - 1. Comprehensive Plan. The proposed preliminary PUD-MF must be located in an area that has been identified as appropriate for multifamily development in the Comprehensive Plan, residential policies or an adopted subarea plan or neighborhood plan.
 - 2. Design Criteria and Density Limitations. Multifamily dwellings may be permitted in any PUD-MF, including any approved density increases or bonuses; provided further, the Hearing Examiner and City council will determine the maximum number of multifamily units allowed in any PUD-MF in consideration of the location criteria. Multifamily PUD’s may also be permitted as part of a mixed-use development, in conjunction with an activity center, such as one of the planned Retail Center PUD’s described in SMC 16.10.100.
 - 3. Other Location Criteria.
 - a. The site is located on one or more arterial or collector streets and the site is also located with respect to major streets and highways or other transportation facilities such that these streets and transportation facilities can provide direct access to the homes. Street types are defined in the City of Sultan design standards and specifications. If the site is located on a corner, access will be encouraged to be from the minor arterial or collector and not from a principal arterial if it is found that such access reduces potential traffic conflicts and carrying capacities on the principal arterial.
 - b. The total area of the PUD-MF is a minimum of two acres.
 - c. The site is located such that it can connect to an existing off-site pedestrian and/or bicycle circulation system to facilitate non-motor vehicle access to the PUD-MF.
 - d. Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-MF.
 - e. The PUD-MF is located in relation to public services, sanitary sewers, water lines, fiber optic conduits, storm and surface drainage systems, and other utility systems and installations such that neither extension nor enlargement of such systems resulting in higher net public cost or earlier incursion of public costs will be required.
 - f. The PUD-MF is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area.

- g. As an alternative to subsections (A)(3)(e) and (f) of this section, the developers of the PUD-MF can:
 - i. Provide private utilities, facilities or services approved by the public agencies which would normally provide such utilities, facilities or services as substituting on an equivalent basis and assure their satisfactory continuing operation and maintenance; or
 - ii. Make provision, acceptable to the City, for offsetting any added net public cost or early commitment of public funds necessitated by such development; or
 - iii. Demonstrate, to the satisfaction of the City, that the anticipated increases in public revenue from the PUD-MF will more than adequately cover any anticipated increase in public costs for installation, operation, and maintenance.
4. Compatibility Criteria/Mitigation of Impacts on Adjacent Uses.
- a. The design and layout of a PUD-MF shall take into account the relationship of the site to the surrounding areas. The perimeter of the PUD shall be so designed as to minimize any undesirable impact of the PUD on adjacent properties.
 - b. Setbacks from the property line of the PUD-MF shall be comparable to, or compatible with, those of the existing development of adjacent properties or, if adjacent properties are undeveloped, the type of development which may be permitted.
 - c. Access/egress routes for traffic do not have to use minor or local access streets in residential neighborhood neighborhoods.
 - d. The site is of sufficient size to generally mitigate impacts of the proposed residential uses within the PUD-MF site itself, including the provision of adequate screening, setbacks, and other buffers.
 - e. The impacts from light and glare can be mitigated on-site through lighting design and location and/or screening and separation, so that the off-site impacts of light and glare are generally consistent with the light and glare impacts from existing adjacent uses.
 - f. Noise impacts from the PUD-MF can be mitigated on-site such that state noise standards can be met.
 - g. The PUD-MF is designed and located so as not to substantially interfere with the operation and use of existing parks and schools in the vicinity of the site.
 - h. Building scale in the PUD-MF shall not exceed the requirements of the development standards in SMC 16.10.120.
5. Permitted Uses. The following uses shall be permitted in a PUD-MF: all permitted residential, accessory, and conditional uses listed in the MD residential zoning district, SMC 16.12.020.
6. Development Standards. PUD-MF, PUD-SF, and PUD-MHP shall be governed by the development standards of the underlying residential and manufactured home park Zoning Districts, as may be modified as described in SMC 16.10.120. Multifamily PUD's shall also be eligible for density increases as described in SMC 16.10.120.
- B. PUD-Single-Family (PUD-SF).
- 1. Comprehensive Plan. The proposed preliminary PUD-SF must be located in an area that has been identified as appropriate for single-family development in the Comprehensive Plan, residential policies or an adopted subarea plan or neighborhood plan.
 - 2. Other Location Criteria.

- a. The site is located on one or more arterial or collector streets and the site is also located with respect to major streets and highways or other transportation facilities such that these streets and transportation facilities can provide direct access to the homes, if the development is more than 10 acres, or 40 units. Street types are defined in the City of Sultan design standards and specifications. If the site is located on a corner, access will be encouraged to be from the minor arterial or collector and not from a principal arterial if it is found that such access reduces potential traffic conflicts and carrying capacities on the principal arterial.
 - b. The total area of the PUD-SF is a minimum of two acres.
 - c. The site is located such that it can connect to an existing off-site pedestrian and bicycle circulation system to facilitate non-motor vehicle access to the PUD-SF.
 - d. Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-SF.
 - e. The PUD-SF is located in relation to public services, sanitary sewers, water lines, fiber optic conduits, storm and surface drainage systems, and other utility systems and installations such that neither extension nor enlargement of such systems resulting in higher net public cost or earlier incursion of public costs will be required.
 - f. The PUD-SF is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area.
 - g. As an alternative to subsections (B)(2)(e) and (f) of this section, the developers of the PUD-SF can:
 - i. Provide private utilities, facilities or services approved by the public agencies which would normally provide such utilities, facilities or services as substituting on an equivalent basis and assure their satisfactory continuing operation and maintenance; or
 - ii. Make provision, acceptable to the City, for offsetting any added net public cost or early commitment of public funds necessitated by such development; or
 - iii. Demonstrate, to the satisfaction of the City, that the anticipated increases in public revenue from the PUD-SF will more than adequately cover any anticipated increase in public costs for installation, operation, and maintenance.
 - h. Multifamily dwellings may be permitted in a single-family PUD; provided, the total number of units does not exceed 20 percent of the approved PUD density, including any approved density increases or bonuses, and is located in an area identified for "scattered multifamily within a single-family" on the Comprehensive Plan map, and has a minimum development size of 10 acres, and meets the other location criteria. Only one "scattered multifamily within a single-family" development may occur where identified on the Comprehensive Plan map.
3. Compatibility Criteria/Mitigation of Impacts on Adjacent Uses.
- a. The design and layout of a PUD-SF shall take into account the relationship of the site to the surrounding areas. The perimeter of the PUD shall be so designed as to minimize any undesirable impact of the PUD on adjacent properties.
 - b. Setbacks from the property line of the PUD-SF shall be comparable to, or compatible with, those of the existing development of adjacent properties

or, if adjacent properties are undeveloped, the type of development which may be permitted.

4. Permitted Uses. The following uses shall be permitted in a PUD-SF:
 - a. Those permitted, accessory, conditional and special uses listed in the LMD single-family residential zoning district, Chapter 16.08 SMC.
 - b. Multifamily dwellings may be permitted in any PUD; provided, the total number of units shall not exceed 20 percent of the approved PUD density, including any approved density increases or bonuses. The multifamily development must be located in an area identified for "scattered multiple-family within single-family" in the Comprehensive Plan and then only if the multifamily meets the location requirements.
 - c. Convenience retail, service, or office uses ("nonresidential uses in a residential PUD") are limited to the size and location appropriate to serve the needs of the residents of the PUD-SF.
 5. Development Standards. PUD-MF, PUD-SF, and PUD-MHP shall be governed by the development standards of the underlying residential and manufactured home park Zoning Districts, as may be modified and described in SMC 16.10.120. Single-family PUD's shall also be eligible for density increases as described in SMC 16.10.120.
- C. PUD-Manufactured Home Park (PUD-MHP).
1. Comprehensive Plan. The proposed preliminary PUD-MHP site must be located in an area that has been identified as appropriate for LMD and MD single-family development in the Comprehensive Plan, residential policies or an adopted subarea plan or neighborhood plan.
 2. Other Location Criteria.
 - a. The site is located on one or more arterial or collector streets and the site is also located with respect to major streets and highways or other transportation facilities such that these streets and transportation facilities can provide direct access to the homes. Street types are defined in the City of Sultan design standards and specifications. If the site is located on a corner, access should be from the minor arterial or collector and not from a principal arterial to reduce potential for traffic conflicts and carrying capacities on the principal arterial.
 - b. The total area of the PUD-MHP is a minimum of five acres.
 - c. The site is located such that it can connect to an existing off-site pedestrian and bicycle circulation system to facilitate non-motor vehicle access to the PUD-MHP.
 - d. Transit is available in sufficient proximity to the site to facilitate transit access to the PUD-MHP.
 - e. The PUD-MHP is located in relation to public services, sanitary sewers, water lines, fiber optic conduits, storm and surface drainage systems, and other utility systems and installations such that neither extension nor enlargement of such systems resulting in higher net public cost or earlier incursion of public costs will be required.
 - f. The PUD-MHP is located with respect to schools, parks, playgrounds, and other public facilities such that the PUD will have access to these facilities in the same degree as would development in a form generally permitted by the underlying zoning in the area.
 - g. As an alternative to subsections (C)(2)(e) and (f) of this section, the developers of the PUD-MHP can:
 - i. Provide private utilities, facilities or services approved by the public agencies which would normally provide such utilities,

- facilities or services as substituting on an equivalent basis and assure their satisfactory continuing operation and maintenance; or
 - ii. Make provision, acceptable to the City, for offsetting any added net public cost or early commitment of public funds necessitated by such development; or
 - iii. Demonstrate, to the satisfaction of the City, that the anticipated increases in public revenue from the PUD-MHP will more than adequately cover any anticipated increase in public costs for installation, operation, and maintenance.
- 3. Compatibility Criteria/Mitigation of Impacts on Adjacent Uses.
 - a. The design and layout of a PUD-MHP shall take into account the relationship to the site to the surrounding areas. The perimeter of the PUD shall be so designed as to minimize any undesirable impact of the PUD on adjacent properties.
 - b. Setbacks from the property line of the PUD-MHP shall be comparable to, or compatible with, those of the existing development of adjacent properties or, if adjacent properties are undeveloped, the type of development which may be permitted.
- 4. Permitted Uses. The following uses shall be permitted in a PUD-MHP: all permitted, residential accessory, and conditional uses listed in the LMD and MD Zoning Districts, SMC 16.12.010 and 16.12.020.
- 5. Development Standards. PUD-MF, PUD-SF, and PUD-MHP shall be governed by the development standards of the underlying residential Zoning Districts, as may be modified as described in SMC 16.10.120. Manufactured home park PUD's shall also be eligible for density increases as described in SMC 16.10.120. (Ord. 793-02 § 1)

16.10.120 Residential PUD Density Increases and Development Standards.

The following density increase provisions and development standards shall apply to all types of residential PUD's (MF, SF, and MHP):

- A. Density Increases. A residential PUD Application may have density increases as provided in this section. A residential PUD may be eligible for density increase based on one or two of the following subsections; provided, in no event may the total density increase for a residential PUD exceed 20 percent. All density increase percentages shall be calculated on the base density permitted in the underlying residential zone. The density increases are transferable within the PUD area as long as the proposed transfer is consistent with all of the requirements of this chapter and is consistent with the conditions of preliminary approval. Density increases shall be governed by the following factors, and are to be treated as additive, and not compounded.
 - 1. Density Increase for Design Factors.
 - a. The project may be granted a maximum of five percent increase in density if it serves the needs of the development's residents and would include such facilities as play areas with equipment, basketball courts, handball courts, ball fields, tennis courts or swimming pools. This could also include landscaping, streetscape, open spaces, plazas, pedestrian facilities and recreational areas and recreational facilities in excess of those minimums required by the underlying zoning.
 - b. The project may be granted a maximum of five percent increase in density if the siting of the proposed development promotes the use of visual focal points, existing significant natural physical features such as

topography, critical areas, view, sun and wind orientation, circulation patterns, physical environment, and energy efficient design.

- c. The project may be granted a maximum of five percent increase in density if the development provides at least one of the following amenities:
 - i. If the project is designed such that the built environment includes preservation and restoration of historically or architecturally significant structures and/or consists of architectural styles that are internally consistent with the project as a whole and with the existing architectural styles in the neighborhood, but does not include normal maintenance such as painting, roofing and tuck pointing;
 - ii. If the scale of the structures is reduced from the maximums permitted by the underlying zone in an effort to develop a more pedestrian-friendly scale and to be consistent with existing development in the neighborhood;
 - iii. If the parking areas are broken up by landscape features in excess of the minimums required by the underlying zoning;
 - iv. If the project contains variation in building siting (i.e., clustering) and building setbacks to facilitate efficient use of the site, while maximizing privacy for residential units in a majority of the units and to preserve slopes, streams, wetlands or other environmental features; and/or
 - v. If the proposed structures incorporate energy efficient design to at least a level of efficiency that exceeds the state standards by one base increment, or if the project incorporates the use of renewable energy sources in a majority of the development. The burden of designation of such structures or features as significant shall be upon the applicant, unless such structures or features are already identified as worthy of preservation in the Comprehensive Plan, parks plan, or other official documents, or on a local, state or national register. Final determination as to significance shall be made by the planning director at the earliest possible time and no later than the Pre-Application review. The Community Development Department staff report shall include a recommendation to the Hearing Examiner on any suggested density increase for these design features. The Hearing Examiner decision shall also include findings and a recommendation regarding these density increases.
 - d. The total possible design and landscape bonuses available under this subsection shall not exceed 15 percent.
2. Density Increase for Affordable Housing. A maximum density increase of 15 percent for the development of on-site and/or off-site housing opportunities for low- or moderate-income families is permitted based on the following standards:
 - a. For each low or moderate-income housing unit provided under this section, one additional building lot or dwelling unit shall be permitted up to a maximum of 15 percent increase in total dwelling units.
 - b. Any off-site affordable housing units used to increase density shall be approved in conjunction with the preliminary PUD for which a density bonus is granted. The Hearing Examiner may impose development standards, construction schedules, and PUD approval conditions on the off-site development to ensure the off-site development meets the

requirements for PUD approvals generally in this chapter, and to ensure appropriate timing of construction of the affordable units.

- c. Any redevelopment of off-site affordable housing units involving rehabilitation of new or combination units may be used to increase the density by an additional five percent; provided, the redevelopment project shall be approved in conjunction with the PUD for which a density bonus is granted.

B. Residential Development Standards. The following criteria shall be applied by the City in reviewing and approving any requested variation from the residential development standards found in the underlying residential zoning district:

1. Building Spacing or Side and Rear Yards. The requirements for building spacing, or side and rear yards as they are often defined, is based on several related factors. Setback requirements within the PUD may be granted by the Hearing Examiner if the proposed design incorporates the following features:
 - a. Privacy. The minimum side yard requirement is intended to provide privacy within the dwelling unit. Where windows are placed in only one of two side-facing walls, or there are no windows, or where the builder provides adequate screening for windows, or where the windows are at such a height or location to provide adequate privacy, the building side yard spacing may be reduced to a zero lot line; provided, a minimum of five feet is maintained between buildings and structures on the adjacent lot and appropriate easements are provided to maintain spacing and permit maintenance access. The minimum rear yard requirement is intended to provide privacy for the outdoor area behind the dwelling unit. Where physical elements such as fences, screens, or open space are provided, rear yards may be reduced to 10 feet.
 - b. Light and Air. The building spacing provides one method of ensuring that each room has adequate light and air. Building spacing may be reduced where there are no windows or very small window areas and where rooms have adequate provisions for light and air from another direction. The building spacing may be reduced to a zero lot line on side yards and 10 feet on rear yards; provided, a minimum of five feet is maintained between buildings and structures and fences on the adjacent lot and appropriate easements are provided to maintain spacing and permit maintenance access.
 - c. Side Yard Use. Areas between buildings are often used as service yards, for storage of trash, clotheslines, or other utilitarian purposes. Where this use is similar for both houses, a reduction of building space permitting effective design of a utility space shall be permitted. Kitchens and garages are suitable uses for rooms abutting such utility yards. In these areas reduction from 10 feet to five feet will be permitted.
 - d. Rear Yard Use. Areas behind buildings provide a usable yard area for residents and can be used for landscaping, recreation, storage, and other residential accessory uses. In areas where physical elements are provided for privacy, a reduction from 20 to 10 feet will be permitted.
 - e. Building Configuration. Typical setback requirements will be required unless the following can be demonstrated. Irregular building configurations may be allowed if the needs expressed in the subsections (B)(1)(a), (b), and (c) of this section are met.
 - f. Front Yard. The minimum front yard is intended to provide privacy and usable yard area for residents. In practice, however, front yards are rarely used, so that only the privacy factor is important. Where a developer provides privacy by reducing traffic flow through street layout such as cul-

de-sacs, or by screening or planting, or by facing the structure toward open space or a pedestrian way, or through the room layout or location, and access to garages of the home face perpendicular to or are not visible from the street frontage, then it is possible to reduce the front yard setback to 15 feet. Also, if 60 percent of the front facing portion of a structure consists of a front porch, setbacks may also be reduced to 10 feet for the front yard. Front porches and stoops which contain less than 60 percent of the front facade may project into the setback; provided, they do not interfere with minimum vehicular sight distance requirements.

2. Lot Size and Lot Coverage. The Hearing Examiner, for the purpose of promoting an integrated project that provides a variety of housing types and additional site amenities, may recommend reductions in the area of individual lots and increases in the lot coverage within a PUD from the required lot area and lot coverage for the zoning district; provided, any such modifications shall be compensated by open space areas elsewhere in the PUD. Open space shall not include areas designated as public or private streets.
3. Open space shall be governed by the requirements of SMC 16.10.140.
4. Streets. PUD's shall provide effective street and pedestrian networks. New developments shall also provide multiple access points to existing streets and plan for access to future adjacent developments.
 - a. Standards of design and construction for roadways within residential PUD's may be modified by the Hearing Examiner.
 - b. Right-of-way width and street roadway widths may also be reduced; especially where it is found that the plan for the PUD provides for the separation of vehicular and pedestrian circulation patterns and provides for adequate off-street parking facilities.
 - c. PUD's shall provide effective street networks. New development shall also provide multiple access points to existing streets and plan for access to future adjacent developments. Effective street networks should include the following:
 - i. Transit and school bus routes and transit and school bus stops, either within the development or on the collector or arterials that provide the major access to the proposed development, unless such provision is deemed inconsistent with the transit or school bus routing plans.
 - ii. Alternative routes from points within and outside the development, thereby lessening congestion on arterials.
 - iii. Direct and efficient emergency vehicle response to all points within the proposed development.
 - iv. Vehicular and pedestrian routes between neighborhoods within the proposed development without requiring all traffic to use arterials between neighborhoods.
 - v. Minimizing travel distances and providing nonmotorized alternatives to help reduce noise and air pollution.
5. Traffic Calming. Traffic calming control devices may be considered where appropriate to control excessive speed and volume of traffic on neighborhood streets. These devices may include but are not limited to, traffic circles, street narrowing, lane stripes, traffic control signing, chicanes, and curb bulbs.
6. Perimeter Buffer Zone.
 - a. There shall be a minimum 30-foot buffer zone in any PUD of multifamily or nonresidential buildings or structures that are adjacent to a LMD and MD residential use districts. No minimum buffer is required adjacent to other Zoning Districts, other than whatever perimeter buffer is deemed

necessary to meet compatibility and impact criteria in earlier sections of this chapter.

- b. The buffer zone must be kept free of buildings or structures and must be landscaped, screened or protected by natural features so that adverse effects on surrounding areas are minimized. The required buffer zone may be used as part of the open space acreage for the PUD as specified in SMC 16.10.140.
7. Nonresidential Uses in a Residential PUD.
- a. In a residential PUD, nonresidential uses of a religious, cultural, recreational, and nonresidential character are allowed to the extent they are designed and intended primarily to serve the residents of the PUD.
 - b. In a residential PUD, neither nonresidential use, nor any building devoted primarily to a nonresidential use, shall be built or established prior to the development of the residential buildings or uses in the residential PUD it is designed or intended to serve.
 - c. Yards. During the review process the reduction in or elimination of the required yards may be authorized, provided landscaped yards of at least such minimum width as required by the zoning district in which the PUD is located shall be maintained by the nonresidential use and shall be built or established prior to the development of the residential buildings or uses in the residential PUD it is designed or intended to serve.
 - d. For nonresidential uses in a residential PUD, it shall be the burden of the PUD applicant to demonstrate to the Hearing Examiner the scale of required nonresidential uses proposed to serve the project and to provide a time frame for the construction of such uses as they relate to the existing and proposed residential development. (Ord. 793-02 § 1)

16.10.130 Reserved.

(Ord. 793-02 § 1)

16.10.140 Open Space Requirements.

- A. For the purpose of this chapter, open space shall be described as follows:
1. “Common open space” means a parcel or parcels of land or an area of water or a combination of land and water within the site designated for a PUD which is designed and intended for the use or enjoyment of the residents or owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residents or owners of the development.
 2. “Usable open space” means areas which have appropriate topography, soils, drainage, and size to be considered for development as active and passive recreation areas for all residents or users of the PUD. Detention areas may be considered under this category providing all the usable standards are met.
 3. “Conservation open space” means areas containing special natural or physical amenities or environmentally sensitive features, the conservation of which would benefit surrounding properties or the community as a whole. Such areas may include, but are not limited to, stands of large trees, view corridors or view points, creeks and streams, wetlands and marshes, ponds and lakes, or areas of historical or archaeological importance. Conservation open space and usable open space may be, but are not always, mutually inclusive.
 4. “Buffer open space” means areas which are primarily intended to provide separation between properties or between properties and streets. Buffer open

space may, but does not always, contain usable open space or conservation open space.

5. "Severely constrained open space" means areas not included in any of the above categories which, due to physical characteristics, are impractical or unsafe for development. Such areas may include but are not limited to steep rock escarpments or areas of unstable soils.
- B. All PUD's shall be required to provide open space in the amount of 20 percent of the gross land area of the site, in the minimum types specified in subsection (C) of this section.
- C. Any combination of open space types may be used to accomplish the total minimum area required to be reserved as follows:

Open Space Percent of Gross Category Land Area		
1.	Usable	15% minimum
2.	Conservation	No maximum or minimum
3.	Buffer	2% maximum
4.	Constrained	2% maximum
5.	Unusable detention areas	5% maximum

(Ord. 885-05 § 1; Ord. 853-04 §§ 1, 2, 3; Ord. 793-02 § 1)

16.10.150 Expiration of Preliminary PUD.

- A. For preliminary PUD approvals for which a master phasing plan has not also been approved pursuant to SMC 16.10.040, an applicant shall file an application for a final PUD approval with the City within 12 months from the date of preliminary PUD approval by the City council. This period shall automatically be tolled for any period of time during which a court appeal is pending.
- B. The Hearing Examiner may authorize one additional 12-month extension for filing a final PUD Application if the Hearing Examiner finds that such extension is consistent with the approval criteria required for each project and that no new information or change in circumstances justifies changing the City's previous preliminary PUD approval.
- C. A phasing plan shall accompany the master plan, for developments where a general master plan for the entire project provides for the project to be constructed in phases. The phasing plan shall describe the general boundaries of each phase and the expected date at which a detailed site plan or subsequent preliminary and final PUD Application for that phase of the development will be submitted; provided, however, no project to be developed in phases may exceed five years from the time the master plan is approved until the final phase is submitted. The Hearing Examiner, as a condition of preliminary PUD or master plan approval, may calculate the amount of time until completion and may also set a schedule for completion of the various phases; such time period may never exceed five years. The time period will be calculated based on the size, location, and development potential of the area, and the need for utility and service extensions for the proposed project and other projected developments in the area.

- D. If a final PUD is not filed within the time periods provided in this section, the preliminary PUD approval shall expire, the PUD overlay zoning shall be removed from the official zoning map of the City and the property shall revert to the underlying “fallback” zoning shown on the official zoning map. (Ord. 793-02 § 1)

16.10.160 Final PUD Review and Approval.

- A. The final PUD Application shall be processed pursuant to the provisions of Chapter 16.120 SMC, except that the administrative review shall be conducted by the community development director, with input from the City engineer, public works director, and building official.
- B. Contents of Application. The final development plan must present all of the information required for the preliminary development plan in a finalized, detailed form. This includes all PUD and supporting information, site plans sufficient for recording and engineering drawings. All schematic plans presented in the preliminary development plan stage, such as a landscape plan, must be presented in their detailed form. Any items not submitted during the preliminary stage must be reviewed, and any preliminary or final plats and public dedication documents required by the City shall also be submitted at this time.
- C. Application Fees. The PUD Application shall be accompanied by a nonrefundable fee in the amount set forth in the fee schedule. Any application for an amendment to a PUD shall be accompanied by a nonrefundable fee in the amount set forth in the fee schedule.
- D. The final PUD shall be transmitted by the planning director to the City council with a recommendation of approval if it is in substantial compliance with the approved preliminary PUD. The final PUD shall be deemed in substantial compliance with the approved preliminary PUD if it does not involve a change to one or more of the following:
1. Violate any of the criteria for approval found in SMC 16.10.090;
 2. Vary the lot area requirements by more than 10 percent;
 3. Involve a reduction of more than 10 percent of the area reserved for the common open space and/or usable open space; provided, the minimum open space requirements are met;
 4. Increase the floor area proposed for nonresidential use by more than 10 percent provided the maximum square footage for nonresidential uses are not exceeded;
 5. Increase the total ground area covered by buildings by more than five percent;
 6. Increase the density or number of dwelling units by more than 10 percent; provided, the maximum density increases are not exceeded.
- E. If the final PUD is not in substantial compliance with the approved preliminary PUD, the applicant shall file for and process an amendment to the preliminary PUD, using the same procedures and requirements for the initial preliminary PUD.
- F. The City council shall act on the final PUD as described in SMC 16.120.050. The City council’s final PUD decision shall be a final decision, appealable to superior court, pursuant to the provisions of SMC 16.120.050 and Chapter 36.70C RCW. (Ord. 793-02 § 1)

16.10.170 Final PUD Acknowledgments – Filing – Copies – Recording.

- A. All final PUD site plans, supporting maps, and illustrations required for filing shall include approval acknowledgments for the mayor, City engineer and community development director.
- B. Within 30 days of approval of the final PUD, the applicant shall provide the Sultan community development department with two sets of mylars of all PUD site plans and

supporting maps and illustrations, and the original and one copy of any required protective covenants, and required agreements suitable for filing with the Snohomish County auditor. The final PUD site plans and any required associated documentation noted above shall be filed at the applicant's expense with a recorded copy provided to the Community Development Department.

- C. The approved final PUD plan shall be a binding restriction on development and shall run with the land, unless it expires as provided in SMC 16.10.150, in which case a notice of expiration shall be recorded against the property when the PUD overlay zoning is removed. (Ord. 793-02 § 1)

16.10.180 Building Permits.

No building permits may be issued for any construction on property that is subject to a preliminary PUD approval until the final PUD has been approved and the applicant has recorded the site plan and associated documentation as provided in SMC 16.10.170. For PUD's which include covenants requiring architectural review by a Homeowner's Association or other PUD entity, the applicant shall provide evidence of approval from such entity prior to issuance of City building permits. (Ord. 793-02 § 1)

16.10.190 Minor Changes and Amendments to Final PUD.

- A. Minor changes of lot lines or the combination of lots if no new lots are created or minor changes in the location, and height of buildings and structures; provided, they are within the development standards established for the PUD, may be authorized by the community development director if required by engineering or other circumstances not foreseen at the time the final plan was approved without requiring approval by the City council. No change authorized by this subsection may cause any of the following:
1. A change in the use or character of the development;
 2. An increase in the overall coverage of structures;
 3. An increase in the intensity of a use;
 4. An increase in traffic generation or a change to proposed traffic circulation that could cause impacts not evaluated in the preliminary or final PUD approval;
 5. A change to proposed public utilities that could cause impacts not evaluated in the preliminary or final PUD approval;
 6. A reduction in approved open space;
 7. A reduction in off-street parking and loading space;
 8. A reduction in required pavement widths.
- B. Any change that does not meet the limitations of subsection A of this section shall be processed in the same manner as the original final PUD, or, if the proposed change does not meet the substantial compliance provisions of SMC 16.10.160, as an amendment to the preliminary PUD. Any changes to the final PUD pursuant to this subsection shall be recorded as amendments in accordance with the procedure established for the recording of the original final PUD documents. (Ord. 793-02 § 1)

16.10.200 Expiration of Final PUD.

If no construction has begun in the final PUD within 24 months from the approval of the final PUD and recording of the final PUD plan and associated documents, the final PUD approval shall expire and the PUD overlay zone on the official zoning map shall be removed; provided, however, the City council, upon recommendation of the community development director and a showing of good cause by the applicant, may extend for a maximum of two periods of 12

months each the period for commencing construction. Each request for a time extension shall be accompanied by a nonrefundable fee as set forth in the fee schedule to cover the costs of processing the request. The City council may impose conditions on any extension request to implement the current development regulations and related requirements in effect at that time. (Ord. 793-02 § 1)

16.10.210 Periodic Review of Building Permits for Consistency with Approved PUD.

After construction commences, the community development director shall review, at least once every six months, all building permits issued and compare them to the overall development phasing program and master plan, if applicable. If the community development director determines that the rate of construction of residential units or nonresidential structures substantially differs from the phasing program, the community development director shall so notify the developer and the City council in writing. The developer shall then submit a revised phasing schedule and substantiate the need for such revisions. The community development director shall review and make recommendation to the City council to approve or deny the revised phasing schedule, with or without conditions, based on the information presented. If the revised phasing schedule is denied, the City shall withhold additional building permits until the approved phasing schedule is met. (Ord. 793-02 § 1)

Chapter 16.18 NONCONFORMANCES

Sections:

- 16.18.010 Nonconformance's – Continuance
- 16.18.020 Nonconformance's – Lots Smaller than Required Minimums
- 16.18.030 Nonconforming lots – Setbacks
- 16.18.040 Nonconforming lots – Applicability
- 16.18.050 Nonconformance's – Adjoining Lots
- 16.18.051 Nonconforming Accessory Dwelling Units
- 16.18.060 Extension or Enlargement of Nonconforming Situations
- 16.18.070 Nonconformance's – Repair, Maintenance, and Construction
- 16.18.080 Change in Use of Property where a Nonconforming Situation Exists
- 16.18.090 Abandonment and Discontinuance of Nonconforming Situations
- 16.18.100 Completion of Nonconforming Projects

16.18.010 Nonconformance's – Continuance.

Unless otherwise specifically provided in this Unified Development Code, Nonconforming Situations that were otherwise lawful on the effective date of this Code may be continued. (Ord. 715-00; Ord. 630 § 2 [16.06.160(A)], 1995)

16.18.020 Nonconformance's – Lots Smaller than Required Minimums.

When a Nonconforming Lot can be used in conformity with all of the requirements applicable to the intended use, except that the lot is smaller than the required minimums set forth in the dimensional and density requirements for each Zoning District, then the lot may be used as proposed just as if it were conforming. (Ord. 715-00; Ord. 630 § 2[16.06.160(B)], 1995)

16.18.030 Nonconforming Lots – Setbacks.

When the use proposed for a Nonconforming Lot is one that is conforming in all other respects, but the applicable setback requirements cannot reasonably be complied with, then the zoning official may allow variances from the applicable setback requirements if he/she finds that:

- A. The property cannot reasonably be developed for the use proposed without such deviations;
- B. These deviations are necessitated by the size or shape of the nonconforming lot;
- C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and
- D. Compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, financial hardship does not constitute grounds for finding that compliance is not reasonably possible. (Ord. 715-00; Ord. 630 § 2[16.06.160(C)], 1995)

16.18.040 Nonconforming Lots – Applicability.

This Chapter applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. (Ord. 715-00; Ord. 630 § 2 [16.06.160(D)], 1995)

16.18.050 Nonconformance's – Adjoining Lots.

If, on the date this Unified Development Code becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this chapter. This requirement shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500-feet of such lot are also nonconforming. The intent of this Chapter is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed. (Ord. 715-00; Ord. 630 § 2[16.06.160(E)], 1995)

16.18.051 Nonconforming Accessory Dwelling Units.

- A. Commencing on October 1, 2003, a registration period of six months, ending April 1, 2004, at 5:00 p.m. is hereby established for the registration of legal nonconforming and illegal detached and attached accessory dwelling units (ADU). No fees shall be charged for such registration. Accessory dwelling unit (ADU) is defined in SMC 16.150.010(6)(a). Upon receipt of the registration, the City shall develop a schedule for the inspection of such accessory dwelling units to determine compliance with the State Building and Fire Codes. An inspection of such structures by the State Electrical Inspector shall also be requested if no records of a prior electrical inspection are provided by the registrant.
- B. Nonconforming Structures. An attached or detached ADU, which qualifies as a Legal nonconforming structure as defined in SMC 16.150.140(9), shall be inspected to determine whether it was in compliance with the State Building and Fire Codes in existence at the date it was constructed. An applicant shall submit a final occupancy permit issued by the City of Sultan or Snohomish County, as appropriate; with respect to said ADU prior to the date said use was regulated by the agency with jurisdiction, as proof of its legal nonconformity or such other proof as may be reasonably available. Upon an adequate showing of nonconformity as determined at the discretion of the City,

the ADU shall be required to meet the provisions of the State Building and Fire Codes which are applicable to any building or structure and are considered life safety Codes. The City shall issue a certificate of noncompliance noting the size and characteristics of the ADU and the structure in which it is located in order to permit its use and continuation and to determine its compliance with the other provisions of SMC 16.25.010. Such registration of legal nonconforming structures may include both attached and detached units which were in conformance with the applicable provisions of law and ordinance at the date constructed.

- C. Registration of Illegal Accessory Dwelling Units. ADUs which were not legal uses at the date constructed may be registered during the registration period set forth in subsection (A) of this Section. Registration shall be accompanied by the fee established for the issuance of a permit for each ADU with such fees to be used to defray the cost of building, fire and other inspections. The City shall establish an inspection schedule for ADUs. Certificates of registration and permit shall be issued to the former illegal structure granting the privileges of a legal nonconforming structure subject to the provisions of SMC 16.25.010 upon certification that the structure is or has been brought into compliance with all current provisions of the State Building Code and City ordinance.
 - 1. Once registered, a formerly illegal ADU shall enjoy all the protections and privileges afforded to a nonconforming structure under the provisions of this Section; provided, however, that such ADU shall be subject to the permit review requirement of SMC 16.25.010 to the end that the City Council reserves the right to impose additional conditions on the continued use and occupancy of the formerly illegal ADU if it is found to constitute a nuisance or present a hazardous condition, or to revoke such registration and permit if a nuisance or hazardous condition relating to the ADU is not abated.
 - 2. The provisions of this subsection (C) shall apply to both attached and detached accessory dwelling units; provided, however, that such ADUs shall be registered and permitted to continue subject to the provisions of this Section only if they were constructed in good faith by construction completed prior to December 31, 1999.
- D. Legal nonconforming units shall receive a permit certificate confirming such status and listing the physical dimensions and other characteristics of the structure; provided, however, that the registration and permit of a formerly illegal ADU may be revoked and/or conditioned in accordance with the provisions of SMC 16.25.010.
- E. Failure to register a structure within the time period established by the provisions of this Section shall be considered to be presumptive proof that such a unit is an illegal unit and subject to abatement. The owner of such structure may overcome such a presumption only by presentation of substantial and competent evidence which establishes the legal nonconforming nature of such building by clear and convincing evidence that the structure was permitted by Snohomish County or the City of Sultan and was in complete compliance with the applicable provisions of state law and county or City Ordinance, at the date such construction was initiated and was completed. (Ord. 823-03 § 2)

16.18.060 Extension or Enlargement of Nonconforming Situations.

- A. Except as specifically provided in this Section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:
 - 1. An increase in the total amount of space devoted to a nonconforming use;
or

2. Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements, or other regulations such as parking requirements.
- B. Subject to subsection (D) of this Section, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this unified development Code, was manifestly designed or arranged to accommodate such use. However, a nonconforming use may not be extended to additional buildings or to land outside the original building.
 - C. A nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming. The volume, intensity, or frequency of use of property where a nonconforming situation exists may be increased, and the equipment or processes used at a location where a nonconforming situation exists may be changed, if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other requirements of this Section occur.
 - D. Notwithstanding subsection (A) of this Section, any structure used for single-family detached residential purposes and maintained as a nonconforming use may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements.
 - E. Notwithstanding subsection (A) of this Section, whenever: (1) there exists a lot with one or more structures on it; and (2) a change in use that does not involve any enlargement of a structure is proposed for such lot; and (3) the off-street parking or loading requirements of this Code that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for off-street parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable off-street parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite off-street parking if: (1) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and (2) such off-street satellite parking is available within 500 feet of the site said satellite parking area is intended to serve, measured from property line to property line. If such off-street satellite parking is not reasonably available at the time the permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit. (Ord. 715-00; Ord. 630 § 2 [16.06.160(F)], 1995)

16.18.070 Nonconformance's – Repair, Maintenance, and Construction.

- A. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged. Major renovation, i.e., work estimated to cost more than 25-percent of the appraised valuation of the structure to be renovated, may be done only in accordance with a permit issued pursuant to this Unified Development Code.
- B. If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed 25-percent of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a permit issued pursuant to this Unified Development Code. This Section does not apply to structures used for single-family detached residential purposes, which structures may be reconstructed pursuant to a permit just as they may be enlarged or replaced.
- C. For purposes of subsections (A) and (B) of this Section:

1. The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
 2. The “cost” of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of subsections (A) or (B) of this Section by doing such work incrementally. An itemized appraisal of the work shall be prepared by an independent professional and provided to the City by the applicant.
 3. The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation determined by a professionally recognized property appraiser.
- D. The building and zoning official shall issue a permit authorized by this Section if it finds that, in completing the renovation, repair or replacement work:
1. No violation of subsection (B) of this Section will occur;
 2. The permittee will comply to the extent reasonably possible with all provisions of this Code applicable to the existing use (except that the permittee shall not lose his or her right to continue a nonconforming use); and
 3. Compliance with a requirement of this Code is not reasonably possible if it cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. (Ord. 715-00; Ord. 630 § 2[16.06.160(G)], 1995)

16.18.080 Change in Use of Property where a Nonconforming Situation Exists.

- A. A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require an amendment in accordance with Chapter 16.128 SMC may not be made, except in accordance with subsections (B) through (D) of this Section.
- B. If the intended change in use is to a principal use that is permissible in the zoning district where the property is located, and all of the other requirements of this Code applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this Code is achieved, the property may not revert to its nonconforming status.
- C. If the intended change in use is to a principal use that is permissible in the zoning district where the property is located, but all of the requirements of this Code applicable to that use cannot reasonably be complied with, then the change is permissible if the City Council approves an application authorizing the change. A permit may be issued if the building and zoning official finds, in addition to any other findings that may be required by this Code, that:
 1. The intended change will not result in a violation of SMC 16.16.020; and
 2. All of the applicable requirements of this Code will be reasonably complied with. Compliance with a requirement of this Code is not reasonably possible if it cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And, in no case may an applicant be given permission pursuant to this Section to construct a building or add to an existing

building if additional nonconformities would thereby be created. (Ord. 715-00; Ord. 630 § 2 [16.06.160(H)], 1995)

16.18.090 Abandonment and Discontinuance of Nonconforming Situations.

- A. If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a consecutive period of 180-calendar days, then that property may thereafter be used only in conformity with all of the current regulations. A permit may be issued if the Council finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.
- B. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this Section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180-calendar days shall not result in a loss of the right to rent that apartment or space thereafter, so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter. (Ord. 715-00; Ord. 630 § 2[16.06.160(I)], 1995)

16.18.100 Completion of Nonconforming Projects.

- A. All nonconforming projects on which construction was begun before the effective date of this Code, as well as all nonconforming projects that are at least 10-percent completed in terms of the total expected cost of the project (excluding land acquisition) on the effective date of this Code may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this Section shall apply only to the particular phase under construction.
- B. Except as provided in subsection (A) of this Section, all work on any nonconforming project shall cease on the effective date of this Code, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a permit issued in accordance with this Section for the type of development proposed. The Hearing Examiner shall order the issuance of such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the Code as it existed before the effective date of this Code and, thereby, would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the City Council shall be guided by the following, as well as other relevant considerations:
 - 1. All expenditures made to obtain or pursuant to a validly issued and unrevoked development permit shall be considered as evidence of reasonable reliance on the Code that existed before this Code became effective.
 - 2. Except as provided in subsection (B)(1) of this Section, no expenditures made more than three years before the effective date of this Code may be considered as evidence of reasonable reliance on the law that existed before this Code became effective.
 - 3. To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some

expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

4. To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.
 5. An expenditure shall be considered substantial if it is equal to 10-percent or more of the total estimated cost of the proposed project (excluding land acquisition).
 6. A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the Code affecting the proposed development site could not be attributed to him or her.
 7. Even though a person had actual knowledge of a proposed change in the Code affecting a development site, the Hearing Examiner may still find that he or she acted in good faith if he or she did not proceed with his or her plans in a deliberate attempt to circumvent the effects of this Code. The Hearing Examiner may find that the developer did not proceed in an attempt to undermine the Code if it determines that: (a) at the time the expenditures were made, either there was considerable doubt about whether any Code would ultimately be passed, or it was not clear that the proposed Code would prohibit the intended development, and (b) the developer had legitimate business reasons for making expenditures.
- C. When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under subsection (B) of this Section. The Hearing Examiner shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:
1. Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying, architectural, or engineering work.
 2. Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
 3. Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.
- D. The Hearing Examiner shall not consider any application for the permit authorized by subsection (B) of this Section that is submitted more than 60 working days after the effective date of this Code. The Hearing Examiner may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.
- E. The Hearing Examiner shall send copies of this Section to the persons listed as owners for tax purposes (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than 15-working days before the effective date of this Code.

- F. The Hearing Examiner shall establish expedited procedures for Hearing applications for permits under this Section. These applicants shall be heard, whenever possible, before the effective date of this Code so that construction work is not needlessly interrupted. (Ord. 715-00; Ord. 630 § 2 [16.06.160(J)], 1995)

Chapter 16.28

SUBDIVISION REGULATIONS

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Article I. Short Subdivisions

16.28.010 Purpose.

- A. The purpose of these regulations is to control the division of land into four lots or less, parcels, sites, or subdivisions, and to promote the public health, safety, and general welfare; to further the goals and objectives of the Comprehensive Plan; to prevent the overcrowding of land; to lessen congestion on the streets and highways; to provide for adequate light and air; to facilitate adequate provisions for water, sewerage, parks and recreational area; to provide for the proper ingress and egress; and to require conveyance by accurate legal description.
- B. These regulations are established pursuant to the provisions of Article 11, Section 11 of the Constitution of the state of Washington and additionally to effectuate the policy of the prescribed state law referring to the platting and dedication of lands, including RCW Title 58 and Chapters 36.70, 58.17, and 65.05 RCW and shall not preclude full compliance thereto. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(i)], 1995)

16.28.020 Applicability.

Every division of land for the purpose of lease, sale, or development into two or more, but less than five lots within the incorporated limits of the City of Sultan shall proceed in compliance with these regulations. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(a)(ii)], 1995)

16.28.030 Exemptions.

The provisions of these regulations shall not apply to:

- A. Cemeteries and other burial plots while used for that purpose;
- B. Divisions made by testamentary provisions for the laws of descent;
- C. Any division of land regulated by the section of this code dealing with regular subdivisions;
- D. Boundary line adjustments of parcels not in a plat or short plat where access is not affected and where no new lot is created thereby and where no lot is reduced in size below the minimum square footage required by the applicable zoning district; provided, that in order to assure that no new lot will result therefrom; a declaration of boundary line adjustment, in a form prescribed by the City Council, shall be recorded with the Snohomish County auditor;
- E. Divisions of land, and any conveyance relating thereto, whether by decree of appropriation, dedication, or deed, so long as the same shall be under the threat of condemnation, the grantee or acquiring party is a public agency and the purpose is either for a public use or necessity, or to transfer to the public agency open space, wetland preserves or buffers, stream corridors and buffers or like of similar critical areas;
- F. Any division where no permanent road may be constructed and where restrictive covenants or lease provisions prohibit construction of buildings of a type that permits human occupancy; overnight camping, or other human habitation;

- G. Any division of land into lots, tracts, or parcels, where the smallest tract is at least one thirty-second of a section, or is 20 acres if the land is not capable of subdivisional description. (Ord. 840-04 § 1; Ord. 777-02 § 1; Ord. 630 § 2[16.10.010(1) (a)(iii)], 1995)

16.28.040 Public Dedications.

Where a public dedication is to be made, such dedication shall be in conformance with the Comprehensive Plan and development code of the City. All public dedications shall be subject to the approval of the City Council.

16.28.050 Revisions of Land.

- A. Within a Short Subdivision. Land within a short subdivision, the short plat of which has been approved within five years immediately preceding, may not be further divided in any manner, until a Final Plat thereof has been approved and filed for record pursuant to that section of this code concerning the subdivision of property into five or more lots, tracts, or parcels; except that when the short plat contains fewer than four parcels, the owner who filed the short plat may file an alteration within the five-year period to create up to a total of four lots within the original plat boundaries. After five years, further divisions may be permitted by a parcel owner when otherwise consistent with the then current regulations of the City of Sultan; provided, that when the subdivider owns more than one lot within a short subdivision, he or she may not divide the aggregate total into more than four lots. Where there have been no sales of any lots in a short subdivision, nothing contained in this section shall prohibit a subdivider from completely withdrawing his or her entire short plat and thereafter presenting a new application.
- B. Within a Recorded Plat. Unless otherwise restricted by resolution or City code, lots recorded pursuant to that section of this code dealing with regular subdivisions may be redivided pursuant to the requirements of this section.
- C. Within an Exempt Subdivision. Land within a subdivision exempted from plat or short plat requirements by RCW 58.17.040(2) may not be further subdivided in any manner within five years immediately following the date of exempt subdivision so as to create any nonexempt lot, tract or parcel unit a Final Plat thereof has been approved and filed for record pursuant to that section of this code concerning the subdivision of property into five or more lots, tracts or parcels; provided, that the above prohibition shall not apply as to lots, tracts or parcels conveyed to purchasers for value. For the purpose of this subsection, the phrase "date of exempt subdivision" means the date of creation of an exempt subdivision as shown by documents of sale or lease, filing of maps or surveys thereof with the county auditor or such other similar proof as is considered sufficient by the City administrator. After five years, further divisions may be permitted by a parcel owner when otherwise consistent with the then current regulations of the City of Sultan.
- D. Contiguous Lot Limitation. Any nonexempt redivision of land authorized by subsections (A), (B) and (C) of this section that would result in the subdivider owning more than four contiguous lots, whether such lots be platted, short platted or unplatted lots, shall be subject to all requirements of that section of this code dealing with regular subdivisions. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1) (a)(v)], 1995)

16.28.060 Defining of Land Included in Short Subdivisions.

Where a subdivider owns not less than one-eighth of a section, or if the land is not capable of subdivisional description, 80 acres, he or she may define the boundaries of his or her short subdivision to include not less than one-sixteenth of a section or, if the land is not capable of

subdivisional description, 40 acres; provided, that no increment of land containing less than one-sixteenth of a section or, if the land is not capable of subdivisional description, 40 acres, remain; and provided further, that his or her definition of boundary leaves proper provision for access to the remaining parcel and is approved by the approving authority. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vi)], 1995)

16.28.070 Identification marker posting and notification.

- A. The subdivider shall, for identification purposes only, cause markers of a type approved by the City to be placed upon each of the road frontage corners of the subject land and maintain them thereon during the period extending from the time of application to the time of final action for the purpose of permitting field checks of the proposed short subdivision. In addition, the applicant or representative shall, for notification purposes, (1) mail notices of application to adjacent taxpayers of record, and (2) post on the subject property at least two signs, one sign on each frontage abutting the public right-of-way or at a point of access to the property. Signs for posting shall be provided to the applicant or representative by the City at a cost identified in the current fee schedule. Such signs shall be posted on the property within five calendar days from the time of application and shall remain posted until all appeal periods have expired. Such mailing and posting shall be evidenced by submittal of a verified statement regarding the date of mailing and date and location of posting.
- B. The City clerk/treasurer or designee shall provide notice of the application and decision in the following manner:
 - 1. Publication of one notice of application and one notice of decision in the official newspaper of the City.
 - 2. The City shall mail notice of the application and decision to the Department of Transportation on every application located adjacent to the right-of-way of a state highway.
- C. The City shall post notices of the short plat application at City Hall and the post office and place a legal notice in the official newspaper of the City. The City, at its option, may also place notice of the application on the City's web page and on the local public access channel. (Ord. 840-04 § 1; Ord. 785-02 § 1; Ord. 770-01 § 1)

16.28.080 Posting of Other Data and Markers.

Where other data or where identification markers are found necessary by any relevant agency to assist it in making a determination, such data and markers shall be placed upon the land and maintained thereon during the period extending from the time of application to the time of final action for the purpose of permitting field checks by the applicable agencies. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(b)], 1995)

16.28.090 Environmental Impact.

- A. The Community Development Director may require additional information from the applicant to determine whether the project must be reviewed under the provisions of the State of Washington Environmental Protection Act (SEPA) of 1971 (Chapter 43.21C RCW) and as the same, may be amended and supplemented from time to time. Preliminary approval of the short plat or short subdivision shall not be given until all requirements of the Act are fulfilled. If a stream or natural drainage way exists in the proposed short plat or short subdivision, it shall not be altered until an assessment is made of the potential environmental effects.

- B. The cost of the study and an Environmental Impact Statement, if required, shall be borne by the applicant. The applicant shall be fully responsible for the adequacy and completeness of such studies and statement. He or she shall meet all requirements of SEPA and the guidelines promulgated by the Council on environmental policy or any other authorized public body or agency. (Ord. 840-04 § 1; Ord. 770-01 § 2; Ord. 630 § 2[16.10.010(1) (a)(vii)(c)], 1995)

16.28.100 Consent to Access.

The subdivider shall permit the free access to the land being subdivided to all agencies considering the short subdivision for the period of time extending from the time of application to the time of final action. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(a)(vii)(d)], 1995)

16.28.110 Review of Procedures on Application.

- A. The Community Development Director shall distribute one copy of the short plat to each of the following:
1. Public Works Director;
 2. Snohomish County Planning Department, if property is adjacent to county property;
 3. City Engineer;
 4. Washington State Department of Transportation, if the short plat application covers property located adjacent to the right-of-way of a state highway;
 5. Any other federal, state or local agencies as may be relevant.
- B. The Community Development Director shall then set a date for return of findings and recommendations from each relevant department or agency, the date to be 15 working days from the date of application; provided, however, that the Department of Transportation shall have 20 days from the date of receipt in which to make findings and recommendations. If the findings and recommendations are not so returned, then the Community Development Director may make such findings as he or she deems just. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1) (a)(vii)(e)], 1995)

16.28.120 Public Hearing Requirements.

Repealed by Ord. 770-01. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(f)], 1995)

16.28.130 Community Development Director Action.

- A. The Community Development Director shall review the proposed short plat or short subdivision with regard to:
1. Its conformance to the general purposes of the Comprehensive Plan and Planning Standards and specifications as adopted by the laws of the State of Washington and the City of Sultan;
 2. Whether appropriate provisions are made in the short plat or short subdivision for drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and school grounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school;
 3. The physical characteristics of the short subdivision site and the Community Development Director may disapprove the short plat or short subdivision

because of flood inundation or swamp conditions. The Community Development Director may require construction of protective improvements as a condition of approval; and

4. All other facts relevant to determine whether the public use and interest will be served by the short plat or short subdivision.
- B. The Community Development Director shall provide written findings for the following:
1. Appropriate provisions have been made for the following services: roads, transit stops, potable water supplies, recreational facilities and sidewalks to provide for students who walk to and from school;
 2. The public use and interest will be served by the short subdivision.
- C. The decision of the Community Development Director shall be final subject to a right of appeal to the Hearing Examiner. The decision of the Hearing Examiner shall be final subject only to a right of review before the Superior Court of the State of Washington for Snohomish County in accordance with the Land Use Petition Act, Chapter 36.70C RCW. (Ord. 840-04 § 1; Ord. 770-01 § 4; Ord. 630 § 2[16.10.010(1)(a)(vii)(g)], 1995)

16.28.140 City Council Action.

Repealed by Ord. 770-01. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(h)], 1995)

16.28.150 Improvement Guarantees.

See SMC [16.120.080](#)(C). (Ord. 840-04 § 1; Ord. 630 § 2[[16.10.010](#)(1)(a)(vii)(i)], 1995)

16.28.160 Surety Requirement.

See SMC [16.120.080](#)(D). (Ord. 840-04 § 1; Ord. 630 § 2[[16.10.010](#)(1)(a)(vii)(j)], 1995)

16.28.170 Certificates.

The following declarations and certificates must be obtained:

- A. A declaration of short division prior to final approval;
- B. Certification of approval by the City given when it finds that the short plat serves a public use and interest and complies with all adopted recommendations for approval; and
- C. A declaration of the short subdivision and of covenants in a form provided by the City shall be signed prior to final recording of the short subdivision. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(k)], 1995)

16.28.180 Final Approval and Recording.

When the short subdivision and the short plat thereof meet all the requirements therefor and will serve the public use and interest, and meet all applicable zoning and land use controls, and the subdivider has provided all of the required documentation and certification, written approval shall be inscribed upon the face of the short plat. The action approving a short plat shall become effective if, within five working days, the applicant shall have filed for record with the auditor of Snohomish County a declaration of short subdivision and the short plat thereof. The original declaration of short subdivision and the short plat thereof, upon recording all be processed in accordance with procedures established regarding plats. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(l)], 1995)

16.28.190 Conditions of Approval.

Short subdivisions shall be recorded as a short plat with the Snohomish County auditor, and shall not be deemed approved until so filed and shall contain a certification setting forth the following:

- A. A full and correct description of the lands divided as they appear on the short plat;
- B. The dedication of all streets and other areas to the public, and others as shown on the short plat;
- C. Shall be signed and acknowledged before a notary public by all parties having any interest in the lands subdivided;
- D. Shall be accompanied by a title report confirming that the title of the lands as described and shown on said short plat is in the name of the owners signing the certificate;
- E. A waiver of right of direct access to any street from any property, if required;
- F. All dedications, including access roads, utilities or other easements, shall be shown on the face of said short plat, which shall thereupon be considered as a quit claim deed to the donee or donees, grantee or grantees for his, her or their use for the purposes intended;
- G. As a condition for approval, said short plats requiring a dedication shall be required to be surveyed by a licensed professional and land surveyor and monuments placed on the site. As a further condition of approval, the City may require a survey and/or monumentation of the lots created by the short subdivision if deemed necessary by the City Planner and/or City Engineer; and
- H. The City Engineer may require that the agreement and waiver be placed upon the face of the short plat. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(a)(vii)(m)], 1995)

16.28.200 Installation of Improvements.

Installation of site improvements may be required in order to ensure improved access and adequate utilities. If site improvements are required to be installed, the subdivider shall meet the requirements set forth in SMC 16.28.070. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(n)], 1995)

16.28.210 Compliance with Conditions of Approval.

All conditions for approval shall be met by the applicant within one year or the short subdivision shall be deemed expired. Sale, lease, or transfer of land within the subdivision shall not be completed until all conditions of approval have been met. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a) (vii)(o)], 1995)

16.28.220 Zoning Effect of Final Approval.

Any lots in a short subdivision shall be a valid land use notwithstanding any change in zoning laws for a period of five (5) years from the effective date of final approval. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(p)], 1995)

16.28.230 Minimum Requirements and Improvement Standards.

- A. General Standards. The public use and interest shall be deemed to require compliance with the standards of this subsection as a minimum. The following minimum standards shall be met:
 - 1. That each lot shall contain sufficient square footage to meet minimum zoning and health requirements;

2. If the lots are to be served by septic tanks, soil data and percolation rates may be required by the Snohomish Health District. Notations regarding the conditions for Health District approval may be required to be inscribed upon the short plat;
3. Where any abutting road has insufficient width to conform to minimum road width standards for the City of Sultan, sufficient additional right-of-way shall be dedicated to the City on the short plat to conform the abutting half to such standards;
4. Short subdivisions located in special flood hazard areas as defined elsewhere in this code shall comply with the floodplain protection standards contained in this chapter.

B. Roadway Design Standards.

1. Access to Roads. Access to the boundary of all short subdivisions shall be provided by an opened, constructed and maintained City road or roads, except that access to the boundary of a short subdivision by private road may be permitted where such private roads are otherwise permitted. If the subdivider uses a private road, each lot having access thereto shall have a responsibility for maintenance of such private road. Any private road shall also contain a utilities easement.
2. Minimum access to all lots within a short subdivision shall be provided by an opened, constructed and maintained City road or private road sufficiently improved for automobile travel having right-of-way width as set forth in the following table:

Design Potential for Access	Minimum Right-of-Way Widths
1 lot not exceeding 1 dwelling unit	20'
2 – 4 lots not exceeding 4 dwelling units	30'
4 dwelling units	30'
5 or more lots or dwelling units	60'

3. The maximum number of lots that may be served by a private road shall be four. In all other cases, access to any lot shall be by an opened, constructed and maintained City road or roads.
4. Road Standards. All plat roads shall be designed and constructed in conformance with the design standards and specifications as specified.
5. Sidewalk Standards. Sidewalks and/or walkways shall be provided to assure safe walking conditions for pedestrians and students who walk to and from school. Sidewalks shall be constructed in accordance with the design standards and specifications as specified.

C. Stormwater Drainage Design Standards. All plats shall comply with the requirements.

D. Design Standards for Areas with Steep Slopes. All plats shall comply with the requirements. (Ord. 840-04 § 1; Ord. 822-03 §§ 1, 2; Ord. 630 § 2[16.10.010(1)(a)(vii)(q)], 1995)

16.28.240 Modifications.

A. General Requirements. Any subdivider may make application to the Hearing Examiner for a variation or modification where it appears there exists extraordinary conditions such as topography, access, location, shape, size, drainage, or other physical features of the

site or other adjacent development. Such application shall accompany the proposed short plat and shall include any and all details as the developer deems necessary to support his application properly and shall outline the provisions from which the modification is sought.

- B. Procedures. When a subdivider requests a modification of the provisions of this subsection, the Hearing Examiner shall hear the reasons for the modifications at a public Hearing. The Hearing Examiner shall make his or her findings on the basis of criteria defined as follows:
1. That there are special circumstances applicable to the particular lot such as shape, topography, location or surroundings, that do not apply generally to other property in the same vicinity and zone;
 2. That such modification is necessary for the preservation and enjoyment of a substantial property right or use possessed by or available to other property in the same vicinity and zone but which, because of special circumstances, is denied to the particular lot;
 3. That the granting of such modification will not be materially detrimental to the public welfare or injurious to property in the vicinity of the particular lot; and
 4. No such modification may be granted if it would have the effect of nullifying the intent and purpose of the Unified Development Code, the Comprehensive Plan, or this subsection. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(a)(vii)(r)], 1995)

Article II. Subdivisions

16.28.250 Purpose.

- A. The purpose of these regulations is to control the subdivision of land to promote the public health, safety and general welfare in accordance with established standards to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to provide adequate public and private streets, easements, water supply, utilities, parks and recreation areas, open spaces, and sites for schools and other public requirements; to ensure that adequate drainage facilities are provided in developing parts of the City; to promote coordination of land development; to conserve the natural beauty; and to require uniform monumenting of land subdivisions and conveyance by accurate legal description.
- B. These regulations are established pursuant to the provisions of Article 11, Section 11 of the Constitution of the state of Washington and additionally to effectuate the policy of the prescribed state law referring to the platting and dedication of lands, including RCW Title 58 and Chapters 36.70, 58.17 and 65.05 RCW and shall not preclude full compliance thereto. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(i)], 1995)

16.28.260 Applicability.

- A. Scope of Coverage.
1. Subdivisions as defined in this code; and
 2. Every redivision of a short subdivision occurring within five years of the date of recording of the original short subdivision.
- B. Exceptions. The provisions of this section shall not apply to:
1. Cemeteries and other burial plots while used for this purpose;
 2. Divisions made by testamentary provisions or the laws of descent;
 3. Manufactured/mobile home developments when established pursuant to the provisions of Chapter 16.52 SMC, establishing manufactured/mobile home park standards;
 4. Boundary Line Adjustments;

5. Division of land into lots, tracts or parcels, each of which is one-thirty-second of a section of land or larger, or 20-acres of land or larger, if not definable as a fraction of a section of land; and
 6. Divisions of land into lots or tracts classified for industrial or commercial use when the Council has approved a binding site plan for the use of the land in accordance with this code.
- C. Public Access to Water Bodies.
1. In all plats bordering publicly owned or controlled bodies of water, streams or rivers, there shall be provided one or more dedicated public access rights-of-way to the ordinary high-water mark, such rights-of-way having a minimum width of 60 feet and being capable of having a road constructed thereon to City standards. Said public accesses shall be provided at intervals of no greater than one-half mile as measured along the ordinary high-water mark of such water body.
 2. If there is no City road or other public access rights-of-way within one-half mile of the plat boundary, then one such dedicated access right-of-way shall be provided within 300 feet from the boundary of the plat and thereafter at one-half mile intervals. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(b)(ii)], 1995)

16.28.270 Expenses.

In addition to any other fees, the applicant shall be required to bear any Engineering and legal fees incurred by the City in connection with the processing of the application and Preliminary Plat and which are not covered by other fees. (Ord. 840-04 § 1; Ord. 630 § 2 [16.10.010(1)(b)(iii)], 1995)

16.28.280 Preliminary Plat – Application Submittal.

- A. Prior to filing an application, an applicant shall be required to arrange a pre-application conference with the Community Development Director, City Engineer, public works and parks representatives for the purpose of preliminary review and discussion of the proposal.
- B. An application shall be submitted with appropriate fees to the Community Development Department and upon filing shall receive a file number and date of receipt. Requirements for a vested application pursuant to Chapter 104, Section 2, Laws of 1987, Regular Session shall have been provided in a complete and accurate manner as determined by the Community Development Director. Within 28-working days of the date of receipt of either an application or resubmitted and/or additional information, the Community Development Department shall determine if the application is complete and accurate for the purposes of vesting. The Community Development Department shall return the application to the plat applicant if it is deemed incomplete or inaccurate. Resubmittals with the necessary information making the application complete within six months of original filing will not be subject to additional plat filing fees.
- C. The applicant shall transmit no fewer than 10-copies to the City. Whenever a Preliminary Plat is revised prior to Public Hearing, the subdivider shall submit 10-copies of the revision, appropriately marked as such to the City. The City shall take responsibility for distribution of the copies to all relevant departments and agencies.
- D. Unless an applicant for preliminary plan approval requests otherwise, a Preliminary Plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing.

- E. The City shall process all Preliminary Plats in accordance with provisions of the State Environmental Policy Act and with all relevant provisions of this Unified Development Code.
- F. The person(s) completing the application must provide a form from the county auditor's office showing that they have reserved the name of the plat being submitted. The name of the plat shall be reserved by the County Auditor for a period not to exceed 40-months. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(iv)(a)], 1995)

16.28.290 Preliminary Plat – Review and Action Time Limits.

- A. Preliminary Plats shall be approved, disapproved or returned to the applicant for modification or correction within the period of days specified in the administration section of this code, unless the applicant consents to the extension of such time period; provided further, that if an EIS is required as provided in RCW 43.21C.030, the specified period shall not include the time spent preparing and circulating the EIS by the City.
- B. Should modification and/or mitigation be requested by the Community Development Director as a result of technical review of the application, the City planner shall request a waiver of the specified time period. If the applicant does not agree to the waiver, the application shall proceed to the Hearing and the Community Development Director may recommend denial of the application. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(iv)(b)], 1995)

16.28.300 Preliminary Plat – Notice of Application.

Notice of the Public Hearing to be held before the Hearing Examiner shall be given in each of the following manners not less than 10 calendar days prior to the Hearing:

- A. The applicant shall, for notification purposes, (1) mail notice of the Public Hearing to each taxpayer of record within 300-feet of any portion of the boundary of the proposed subdivision; provided further, that owners of real property located within 300-feet of any portion of the boundaries of such adjacently located parcels of real property that are owned by the owner of real property proposed to be subdivided shall also be notified; and (2) post on the subject property at least two signs, one sign on each frontage abutting a public right-of-way or at the point of access to the property. The property shall remain posted until all appeal periods have expired. Signs for posting shall be provided to the applicant by the City at a cost identified in the Current Fee Schedule. Such mailing and posting shall be evidenced by submittal of a verified statement regarding the date of mailing and date and location of posting.
- B. The City Clerk/Treasurer or designee shall provide notice of Hearing in the following manner:
 - 1. Publication of one notice in the official newspaper of the City;
 - 2. Mailed notice to any City or county whose municipal boundaries are within one mile of the proposed subdivision; to the Department of Transportation on every proposed subdivision located adjacent to the right-of-way of a state highway; and to any other federal, state, or local agency as deemed appropriate by the City Clerk/Treasurer.
- C. All Hearing notices required by this Section shall include the date, time, and place of the Public Hearing, and a description of the location of the proposed subdivision in the form of either a vicinity location sketch or a written description, other than a legal description. (Ord. 840-04 § 1; Ord. 785-02 § 2; Ord. 630 § 2[16.10.010(1)(b)(iv)(c)], 1995)

16.28.310 Preliminary Plat – Review Procedures for an Application.

- A. The Community Development Director shall distribute one copy of the Preliminary Plat to each of the following:
 - 1. Public Works Director;
 - 2. Snohomish County Planning Department, if property is adjacent to County property;
 - 3. City Engineer;
 - 4. Washington State Department of Transportation, if the Preliminary Plat Application covers property located adjacent to the right-of-way of a state highway;
 - 5. Any other federal, state or local agencies as may be relevant.
- B. The Community Development Director shall then set a date for return of findings and recommendations from each relevant department or agency, 15-working days from the date of application; provided, however, that the Department of Transportation shall have 20-days from the date of receipt in which to make findings and recommendations. If the findings and recommendations are not so returned, then the City planner may make such findings as he or she deems just. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(iv)(d)], 1995)

16.28.320 Preliminary Plat – Public Hearing.

- A. Upon receipt of the staff reports and agency comments, the City clerk/treasurer or designee shall set a date for a Public Hearing by the Hearing Examiner and shall give notice as follows:
 - 1. The notice shall contain the date, hour, and location of the Hearing and the legal description of the property together with either a vicinity sketch or a location description in nonlegal language calculated to advise the general public of the location of the subject property;
 - 2. This notice shall be published at least once, not less than 10-days prior to the Hearing, in the official newspaper of the City.
- B. Notification of the adjacent property owners and posting of the subject property shall be as required in SMC 16.28.070. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(iv)(e)], 1995)

16.28.330 Preliminary Plat – Hearing Examiner Action.

- A. The Hearing Examiner shall hold an Open Record Hearing and consider and review the proposed plat with regard to:
 - 1. Its conformance to the general purposes of the Comprehensive Plan and planning standards and specifications as adopted by the laws of the state of Washington and the City of Sultan;
 - 2. Whether appropriate provisions are made in the short subdivision for: drainage ways, streets, alleys, other public ways, water supplies and sanitary wastes, transit stops, parks and recreation, playgrounds, schools and school grounds;
 - 3. The physical characteristics of the subdivision site and may disapprove because of flood, inundation or swamp conditions. It may require construction of protective improvements as a condition of approval; and
 - 4. All other relevant facts to determine whether the public use and interest will be served by the short subdivision.
- B. The Hearing Examiner shall provide written findings for the following:
 - 1. Appropriate provisions have been made for the following services: roads, transit stops, potable water supplies and recreational facilities; and
 - 2. The public use and interest will be served by the platting.
- C. The Hearing Examiner shall:

1. Approve the proposed plat with or without conditions; or 2. Return the proposed subdivision to the applicant for modification or correction within the period of days from the date of filing of the application with the City planner put forth in the administration section of this code, unless the applicant consents to an extension of such time. If an environmental impact statement is required, the period of days shall not include the time spent preparing and circulating the statement.
2. Disapprove the proposed plat.
3. The Hearing Examiner may require the subdivider to enter into a developer/subdivision agreement to memorialize the Preliminary Plat conditions of approval, requirements for the construction of all infrastructure improvements including plan submittals, inspections, bonding, including private improvements and facilities associated with the subdivision.

16.28.350 Term of Preliminary Plat Approval.

- A. Approval of Preliminary Plat shall be effective for five (5) years from the date of approval unless extended by the Hearing Examiner as provided for herein.
- B. Upon written application therefore by the applicant or his successor, and filed with the City at least 30-days prior to the expiration of approval, the Hearing Examiner may extend approval for not more than one additional one (1) year period, if, in the opinion of the Hearing Examiner, the applicant has attempted in good faith to submit the Final Plat within the five (5) year period in accordance with Preliminary Plat approval procedures contained herein.
- C. Nothing contained herein shall prohibit the applicant, during the effective life of the Preliminary Plat approval, from developing his or her subdivision and requesting final approval by divisions; provided, that no deviation from the general scheme of the Preliminary Plat as approved may be permitted in any manner other than by the procedures set out herein governing the approval of Preliminary Plats. (Ord. 840-04 § 1; Ord. 815-03 § 2; Ord. 630 § 2[16.10.010(1)(b)(v) (a)], 1995)

16.28.360 Changes Permitted following Preliminary Plat Approval.

- A. Except as provided for in this Section, approved Preliminary Plats may only be revised by processing and approval in the manner set forth in this Code for original Preliminary Plat approval, and the standard of review before the Hearing Examiner shall be whether the revision is consistent with the public health, welfare and safety and is generally consistent with the Preliminary Plat.
 1. Upon five business days' advance notice (describing details of said revision) to the Community Development Director, the following revisions may be made by the applicant upon approval of the Community Development Director without Administrative review and without review by the Hearing Examiner:
 - a. Construction details, so long as improvements will be installed in a workmanlike manner consistent with the location, dimension and finish appearance as set out in the approved Preliminary Plat;
 - b. Engineering details, so long as the proposed detail does not modify or eliminate features specifically required as an element of the Preliminary Plat as approved;
 - c. Changes in lot lines or dimensions, so long as all lots maintain minimum lot size, dimension, and the general location of each lot and access to the lot remain the same; and

- d. A decrease in the number of lots to be created as depicted on the approved Preliminary Plat may be allowed. An increase in the number of lots shall not be allowed.
 - e. If, after review by the City planner of the proposed revisions, it is determined that the proposal exceeds conditions in subsections (A)(1)(a) through (A)(1)(d) of this section, the planner may remand the proposal for administrative review.
2. The following revisions may be made by the applicant without review by the Hearing Examiner but upon Administrative Review as provided for in subsection 3. A. of this Section:
 - a. Changes in lot lines, dimensions, size or locations affecting no more than 10 percent of the total number of lots depicted on the Preliminary Plat as approved; and
 - b. Changes in the locations of roads and other public improvements; provided, that no critical area shall be affected and all critical area setbacks shall be observed and access to each lot shall be equivalent to access provided for in the approved Preliminary Plat.
3. For revisions permitted by Administrative Review, that Review shall be conducted as follows:
 - a. Applicant shall make application for revision of the Preliminary Plat and request administrative review on such forms as the Community Development Director shall maintain.
 - b. The Community Development Director shall review the application and make a written decision within 20 days from the date the application is complete. A copy of the Community Development Director's decision shall be mailed to the applicant or the applicant's representative, and all parties of records when the Preliminary Plat was approved and copies shall be supplied to the City administrator, the mayor and the designated representative of the City Council on the date the Community Development Director's decision is mailed.
 - c. The Community Development Director's decision shall contain a description of the original Preliminary Plat as approved and a description of the proposed administrative amendment. The Community Development Director's decision also shall contain an analysis of the applicable review criteria.
 - d. To grant revision, the Community Development Director must find:
 - i. The revision maintains the design intent or purpose of the original approval;
 - ii. The revision maintains the quality of design or product established in the original approval;
 - iii. The revision will not cause a significant environmental or land use impact on the site or beyond the site other than impacts which the approved Preliminary Plat would cause; and
 - iv. Circumstances render it impractical, unfeasible or detrimental to the public interest to accomplish the Preliminary Plat as originally approved.
 - e. Any party aggrieved by the decision of the City planner may, within 20 days of the date of mailing of the Community Development Director's Decision, Appeal the Decision of the Community Development Director to the Hearing Examiner. An appeal to the Hearing Examiner shall be conducted like all other appeals to the Hearing Examiner permitted by this Code, except that the Hearing Examiner shall use the same criteria to grant the revision as the Community Development Director uses. Unless

the Decision of the Community Development Director is timely appealed, the Decision of the Community Development Director shall be final. The Decision of the Hearing Examiner shall be final, subject only to a right of review in the Snohomish County Superior Court in accordance with the Land Use Petition Act of the State of Washington.

- B. Subsequent to preliminary approval, if the City learns of any possible violation of conditions of such approval, the City may set the matter for Public Hearing before the Hearing Examiner within a reasonable time, not to exceed 45-days from the date of notice of the violation. Notice of this Hearing shall be in accordance with SMC 16.28.300. At the Hearing, the Hearing Examiner shall determine whether a violation exists, and impose conditions that conform the plat to the provisions of this title and/or to the conditions of the original Preliminary Plat approval. (Ord. 840-04 § 1; Ord. 757-01 § 1; Ord. 630 § 2[16.10.010(1)(b) (v)(b)], 1995)

16.28.370 Prohibition Against other Subdivisions.

No subdivision by short plat shall be approved that includes any land contained within an approved Preliminary Plat during the period in which said Preliminary Plat is valid. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(v)(c)], 1995)

16.28.380 Preliminary Plat Withdrawal.

When the owner(s) of property subject to an approved Preliminary Plat wish to withdraw the approved plat prior to its normal expiration, the owner(s) shall file with the City Clerk/Treasurer's office, a notarized statement, in a form provided by the City, requesting withdrawal. The Hearing Examiner shall issue an order approving withdrawal within 30-calendar days of receipt of a properly completed request form. A copy of said order shall be transmitted to the owner(s) for inclusion in the official records of the City. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010 (1)(b)(v)(d)], 1995)

16.28.390 Preliminary Plat Lapse.

If the applicant has failed to complete his or her plat within five (5) years from the date of Preliminary Plat approval and has failed to request and receive extensions of the Preliminary Plat approval, the Preliminary Plat approval shall lapse, the project will no longer be vested, and further development efforts will require a new application under the current application and Development Standards. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(v)(e)], 1995)

16.28.395 Model Homes.

- A. Purpose. The purpose of this Section is to permit the construction of a limited number of model homes as defined in SMC 16.150.130 (17)(a), on an approved Preliminary Plat, prior to Final Plat approval. Allowing model homes provides the opportunity for builders and developers to showcase their product prior to Final Plat approval. Nothing in this Section shall be construed as permitting model homes in short subdivisions as defined in SMC 16.150.190(19). This Chapter shall not be construed to supersede or amend the purpose and intent of this title.
- B. Approval Authority. The Community Development Director is authorized to approve, approve conditionally, or deny model home applications, under the criteria set forth in subsections (C) through (E) of this Section.
- C. Eligibility. A subdivision having received Preliminary Plat approval is eligible for model homes, provided the following criteria are met:

1. The applicant has submitted and received all required permits and approvals required of the Preliminary Plat approval.
 2. All required retention and detention facilities necessary for the areas of the subdivision serving the model homes are in place and functional, to the satisfaction of the City Engineer.
 3. All critical areas upon or immediately adjacent to the areas of the subdivision serving the model home(s) have been protected and/or mitigated, in accordance with adopted Critical Areas Regulations.
 4. The model home(s) and sales facility meet the access and fire protection requirements of the Building Official.
 5. All areas of the subdivision serving the model home(s) are served by an all weather surface roadway constructed to the City Design Standards and Specification.
 6. All areas of the subdivision serving the model home(s) have installed frontage improvements including curb, gutter and sidewalk, as required by the Preliminary Plat approval or this Code.
 7. Water and sewer are installed to each lot proposed for model homes, as directed by the City Engineer.
 8. All proposed streets serving the model homes are adequately marked with street signs, to the satisfaction of the City Engineer and Public Works Director.
 9. Lot property corners of all lots proposed to be used for the model home complex have been set by a licensed, professional land surveyor in accordance with the Preliminary Plat lot configuration.
 10. Setbacks for the model home(s) shall be measured from the proposed lot lines and setbacks per the Preliminary Plat approval.
 11. The number of model homes shall not exceed that allowed by subsection (D) of this Section.
 12. Each model home shall be unique; no individual floor plan shall be repeated; and reversed floor plans and/or exterior facade variations will not be considered as a unique model home.
 13. An instrument has been recorded against the parcels containing the model home(s) stating, "Model Home(s) are subject to removal should the Preliminary Plat not receive Final Plat Approval or the Approval period has expired, consistent with Section 16.28.350." This instrument shall remain in effect until the plat is recorded or the home(s) are removed.
- D. Number Permitted. The number of model homes permitted for each subdivision shall be no greater than 20-percent of the approved lots within the Preliminary Plat, not to exceed a total of nine homes. In the event that calculation of the number of lots equal to 20-percent of the total number of preliminary lots creates a fractional lot, the number of permitted lots for model homes shall be rounded up, not to exceed the maximum allowed.
- E. Application Requirements. The following information shall be required in addition to the standard submittal requirements for a single-family residential building permit.
1. The applicant shall have written authorization from the property owner permitting the model home(s) if the applicant is other than the owner of the approved Preliminary Plat.
 2. Title report current within the last 30-days.
 3. Name of approved Preliminary Plat as well as the proposed name of the Final Plat (if different).
 4. Parent tax parcel number(s) involved in the complete development.
 5. Date of Preliminary Plat approval.
 6. Date of Preliminary Plat approval expiration.

7. Copy of adopting resolution, motion, or subdivision agreement, approving the Preliminary Plat.
8. Overall site plan showing the Preliminary Plat, including phases (if applicable) and the location of all proposed model homes.
9. Overall site plan shall include the location of proposed temporary improvements specific to the model home(s) use such as the location of: signage, flags, banners, fencing, landscaping, sales trailer and impervious surfaces such as parking areas and sidewalks.
10. Parking shall be subject to the regulations of Chapter 16.60 SMC.
11. Individual site plans showing the location of the model home(s) in relation to the property lines and setbacks consistent with the Preliminary Plat approval.
12. Submittal of financial securities at 150 percent of a contractor's cost estimate, approved by the City planner, necessary to restore the site to conditions existing prior to the construction of the model home(s) and all associated structures and improvements.
13. Payment of model home review fee as set forth in the adopted fees resolution. The model home review fee shall be applicable only to the review of the overall model home complex site plan. All other applicable fees shall be paid for the proposed plat improvements and building permit fees prior to individual model home building permit issuance.

F. Occupancy Requirements.

1. Written approval from the City of Sultan, in the form of a temporary certificate of occupancy shall be posted at the main entry to each model home, allowing public access to the model home.
2. No model home shall be occupied for residential use prior to recording of the Final Plat. No model home shall be sold, leased, rented or otherwise transferred in ownership until the Final Plat is recorded, unless the property interest is transferred in conjunction with a transfer in interest of the plat as a whole.
3. One preliminarily approved lot may be used to locate a temporary sales trailer for the purpose of marketing the model home(s). This provision is not intended to increase the number of model homes permitted under subsection (D) of this section.
4. One preliminarily approved lot may be used to furnish off street parking. This provision is not intended to increase the number of model homes permitted under subsection (D) of this section.
5. The hours of operation of the model home complex shall be limited to daylight hours only, unless street lighting is installed to the satisfaction of the City Engineer and Public Works Director.
6. If street lighting is installed to the satisfaction of the City Engineer and Public Works Director, the hours of operation shall be limited to 8:00 a.m. to 9:00 p.m.
7. The model home(s) and sales trailer shall be used for the exclusive purpose of marketing the homes within the plat, not as a branch real estate office.

G. Duration Permitted. The model home(s) and/or sales trailer may be used for no more than 24 months from the date of approval.

H. Removal. The model home(s) and all associated improvements, including but not limited to a sales trailer, shall be removed within 120 days of the following occurrences, unless the action is appealed under SMC 16.120.100:

1. Preliminary Plat approval has expired and no extension has been granted.
2. The subdivision was denied Final Plat approval and/or requires substantial improvements not consistent with the design of the preliminary approved plat in the opinion of the Community Development Director.
3. The approval period has expired, consistent with SMC 16.28.350.

- I. Appeals. Administrative interpretations and approvals may be appealed in accordance with the requirements set forth in Chapter 16.120 SMC. (Ord. 855-04 § 1)

16.28.400 Final Plat – Procedure for Filing.

- A. For purposes of filing a Final Plat, the subdivider shall submit to the Community Development Director five prints thereof; and one print and stable base polyester film or other approved material (hereinafter referred to as mylar). All City Departments who reviewed and commented on the Preliminary Plat shall examine the Final Plat for compliance with the provisions of the Land Development Code.
- B. After receiving a copy of the Final Plat, the Community Development Director and City Engineer shall examine, or have examined, the map as to sufficiency of affidavits and acknowledgments, correctness of surveying data, mathematical data and computations, and such other matters as require checking to ensure compliance with the provisions of state laws pertaining to subdivisions with this code, and with the conditions of approval. Traverse sheets (computation of coordinates), and worksheets showing the closure of the exterior boundaries and of each irregular lot and block, and the calculation of each lot size shall be furnished. If the Final Plat is found to be in correct form, and the matters shown thereon are sufficient, the Community Development Director shall obtain the signature of the City Engineer on the mylar of the plat map, and will schedule final consideration of the plat map before the Council. Each formal plat map shall be accompanied by a title report showing the names of all persons, firms or corporations whose consent is necessary to dedicate land for public usage.
- C. Each Preliminary Plat submitted for final approval of the City Council shall be accompanied by the following agencies' recommendations for approval or disapproval:
 - 1. Local health district or other agency furnishing sewage disposal and supplying water, as to the adequacy of the proposed access of sewage disposal and water supply;
 - 2. Community Development Director, as to compliance with all terms of the preliminary approval of the proposed plat, subdivision or dedication;
 - 3. Department of public works;
 - 4. Other relevant federal, state or local agencies.None of the agencies listed in subsections (A) and (C) of this section shall modify the terms of its recommendations without the consent of the applicant.
- D. If the City Council finds that the Final Plat has been completed in accordance with the provisions of this code, that all required improvements have been completed or the arrangements or contracts have been entered into a guarantee that such required improvements will be completed, and that the interests of the City are fully protected, the City Council will (1) adopt a resolution, which incorporates its findings and conclusions, approving the Final Plat and (2) require the Mayor and the majority of the City Council Members present at the meeting to sign the Final Plat accepting such dedications as may be included thereon. The Final Plat shall then be returned to the subdivider for filing for record with the County Auditor and must be filed within 30-days from the date of approval by the Council. (Ord. 840-04 § 1; Ord. 831-03 § 1; Ord. 630 § 2[16.10.010(1)(b)(vi)(a)], 1995)

16.28.410 Final Plat – Format.

- A. The Final Plat shall be clearly and legibly drawn in ink upon mylar. Photographic reproduction on mylar may be substituted.
- B. The scale of the plat shall be one inch equals 100-feet, or one inch equals 50-feet, or one inch equals 20-feet; or such scale as may be acceptable to the City.
- C. The size of each sheet shall be 18 inches long by 24 inches wide.

- D. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of two inches on the left edge, and one-half inch on the other three sides.
- E. If more than two sheets are necessary to display plat drawing, an index of the entire subdivision showing the arrangement of all sheets may be required to be included on each sheet.
- F. The plat title, scale and north point shall be shown on each sheet of the Final Plat.
- G. All signatures placed on the Final Plat shall be original signatures written in permanent black ink. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1) (b)(vi)(b)], 1995)

16.28.420 Final Plat – Required Information.

The following information is required on the Final Plats:

- A. Full and complete legal description of all land included in the plat;
- B. Location and names, without abbreviations of all:
 - 1. Streets,
 - 2. Public areas and easements,
 - 3. Adjoining streets,
 - 4. Street names previously approved by the City;
- C. The length and bearing of all straight lines, radii, arcs and semi-tangents of all curves;
- D. Centerline data on streets and easements, including bearings and distances;
- E. All dimensions along the lines of each lot, in feet and decimals of a foot to the nearest hundredth, with the true bearings and any other data necessary for the location of any lot line in the field;
- F. Centerline data, width and sidelines of all easements and rights-of-way to which the lots are subject. If the easement is not definitely located of record, a statement as to the easement shall appear on the title sheet;
- G. Easements for storm drains, sewers and other purposes shall be denoted by broken lines;
- H. Each easement shall be clearly labeled and identified and if already of public record, proper reference given;
- I. Contiguous plats by name, or if unplatted, note “unplatted”;
- J. City or County boundaries crossing or adjoining the subdivision;
- K. Lots shall be numbered in sequence and shall indicate area in either square feet or acres. No two lots in any subdivision shall bear the same number, notwithstanding division of the platted subdivision into separate blocks;
- L. In the event that more than one plat sheet is used, a lot shall be shown entirely on the sheet;
- M. The Final Plat shall show clearly any stakes, monuments or other evidence found on the ground which were used as ties to establish the boundaries of the tract;
- N. The location of all permanent monuments within the subdivision;
- O. Accurate outlines and designations of any areas to be dedicated or reserved for public use or to be committed for the common use of all property owners with the purpose of dedication, reservation and commitment to be clearly set forth on the plat document together with accurate references to appropriate recorded documents;
- P. All required dedications, endorsements, covenants, affidavits and certificates shall show on the face of the Final Plat;
- Q. The Final Plat shall show the subdivision of the section or sections involved and show the township and range;
- R. Specific wording as may be required by the Preliminary Plat approval;
- S. A plat or subdivision contiguous to, or representing a portion of or all of the

frontage of a body of water, river or stream shall indicate the location of monuments, which shall be located at such distance above high-water mark as to reasonably ensure against damage and destruction by flooding or erosion;

- T. If duplexes are proposed, the Final Plat shall depict the proposed lot or lots which may be developed with a duplex structure. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(vi)(c)], 1995)

16.28.430 Final Plat – Dedications.

- A. All streets, highways and parcels of land shown on the Final Plat and intended for any public use shall be offered for dedication for public use, except where the provisions of the code provide otherwise.
- B. Streets, or portions of streets, may be required to be set aside by the City for future dedication where the immediate opening and improvement is not required, but where it is necessary to ensure that the City can later accept dedication when the streets become needed for further development of the area or adjacent areas.
- C. Easements being dedicated shall be indicated on the face of the plat as follows: An easement shall be reserved for and granted to all utilities serving subject plat and their respective successors and assigns, under and upon the exterior seven feet parallel with and adjoining the street frontage of all lots in which to install, lay, construct, renew, operate and maintain underground conduits, cables, pipe, and wires with necessary facilities and other equipment for the purpose of serving this subdivision and other property with electric, telephone and utility service together with the right to enter upon the lots at all times for the purposes herein stated. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(vi)(d)], 1995)

16.28.450 Final Plat – File with Auditor.

- A. The original of the Final Plat shall be filed for record with the County Auditor.
- B. The subdivider shall provide the City with three copies of the recorded plat.
- C. Should a plat or dedication be filed or recorded without approval of the City Council, the City attorney shall apply for a writ of mandate in the name of and on behalf of the Council, directing the auditor and assessor to remove from their files or records the unapproved plat or dedication of record. The subdivider shall provide the City with three copies of the recorded plat. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(vi)(f)], 1995)

16.28.460 Final Plat – Effect of Filing.

Any lots in a Final Plat field for record shall be for a valid land use as provided for in this Unified Development Code. Further, after filing, the plat map shall become the property of the City. For a period of five (5) years after Final Plat approval, unless the legislative body finds that a change in conditions creates a serious threat to the public health, safety or welfare in the subdivision, a subdivision shall be governed by the terms of approval of the Final Plat, and the statutes, ordinances and regulations which were in effect at the time of approval. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b) (vi)(g)], 1995)

16.28.470 Replats.

- A. General. Replats of recorded plats shall proceed as specified by this title for the approval of a Preliminary Plat except as modified by this Chapter.
- B. Multiple Ownership. Where the lots within a recorded plat are held in more than one ownership, the application for replat shall not be accepted by the City for processing

unless accompanied by the signatures of all property owners within the plat whose lot boundaries would be altered or affected by the replat.

- C. Alteration of Installed Improvements. Whenever a replat will involve the relocation, removal or reconstruction of existing plat improvements or open space, the whole of the land embraced in the plat(s) proposed to be replatted shall be and does constitute an assessment district for the purposes of financing said relocation, removal or reconstruction. Assessment rates and requirements shall be established by the Planning Commission at the time of replat approval.
- D. Recording. Any replat shall be filed and recorded with the County Auditor and shall thereafter be the lawful plat and substitute for all former plats; provided that, should the said plat addition or additions be vacated and not otherwise altered or replatted, it shall only be necessary to file with the County Auditor the order, resolution or ordinance vacating the same, and the Auditor shall thereupon note upon the original plat the part thereof so vacated.
- E. Power of Council Not Affected. Nothing in this Chapter shall in any way change, limit or affect the power now vested in the Council to vacate streets or parts of streets. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(vii)], 1995)

16.28.480 Vesting.

An application which contains all the information required pursuant to state law shall be considered under the provisions of this Unified Development Code in effect on the date the application is submitted unless, within three (3) weeks, it is determined that information submitted is inaccurate or incomplete. Examples of such misrepresentation or inaccuracy include, but are not limited to, naturally occurring site conditions different from those represented by application submittals, or incorrect submittal information as determined by the City Planner. Applications that have been remanded or returned to the applicant, and which are subsequently resubmitted, are vested under the provisions of the Code in effect at the time the resubmitted information is deemed complete and accurate as stipulated in these regulations. (Ord. 840-04 § 1; Ord. 630 § 2[16.10.010(1)(b)(viii)], 1995)

Chapter 16.92 STORMWATER MANAGEMENT PERFORMANCE STANDARDS

Sections:

16.92.010	Purpose and Intent
16.92.020	Exemptions
16.92.030	Permit Requirements – Waivers
16.92.040	Stormwater Management Permits
16.92.050	Automatic Rejection of Permit
16.92.060	Application for Preliminary Review for Modification to Existing Development
16.92.070	Request for Appeal
16.92.080	Permit Duration
16.92.090	Plan Adherence
16.92.100	Maintenance
16.92.110	Inspections

16.92.010 Purpose and Intent.

- A. The purpose of this Chapter is to protect, maintain and enhance both the

immediate and the long-term health, safety, and general welfare of the citizens of Sultan, while allowing landowners reasonable use of their property.

- B. The intent of this Chapter is:
1. To protect the chemical, physical and biological quality of ground and surface waters.
 2. To encourage the protection of natural systems and the use of them in ways which do not impair their beneficial functioning.
 3. To perpetuate groundwater recharge.
 4. To reduce erosion loss of valuable topsoil's and subsequent sedimentation of surface water bodies.
 5. To protect the habitat of fish and wildlife.
 6. To prevent significant loss of life and property due to flooding.
 7. To reduce the capital expenditures associated with floodproofing and the installation and maintenance of storm drainage systems.
 8. To minimize the adverse impact of development on the water resources of the City of Sultan.
- C. The City acknowledges that under certain circumstances it will not be possible or practical to meet all of the objectives of this Chapter. In these cases, developments will be evaluated to determine the methods and approaches by which the developer proposes to mitigate any adverse effects which may otherwise result from the practical inability to meet all of the objectives of these performance standards.
- D. The City adopts the most recent Department of Ecology Stormwater Management Manual for the Puget Sound Basin. Said Manual as it now reads or is hereafter amended is incorporated into the Sultan Municipal Code by this reference. (Ord. 744-00; Ord. 630 § 2[16.10.110(1)], 1995)

16.92.020 Exemptions.

- A. General. For the purpose of these performance standards, the following activities shall be exempt from the formal permitting procedure of this Chapter:
1. Maintenance work on utility or transportation systems; provided, such maintenance work does not alter the purpose and intent of the system as constructed.
 2. Maintenance work performed on existing stormwater detention/retention structures and drainage channels for the purpose of maintaining public health and welfare.
 3. Maintenance or renewal of existing pavement, or maintenance of existing buildings, or for small properties having an impervious surface area of 3,000 square feet or less.
- B. Emergency Exemption. This Chapter shall not be construed to prevent the accomplishing of any act necessary to prevent material harm to or destruction of real or personal property as a result of a present emergency, including but not limited to fire and hazards resulting from violent storms, or when the property is in imminent peril and obtaining a permit is impractical. For purposes of this Code, action must be taken within 30-days of an emergency to qualify as an emergency exemption. A report of any emergency action shall be made to the Building and Zoning Official by the Owner or person in control of the property on which the emergency action was taken as soon as practicable, but no more than 10-days following such action. Remedial action may be required by the Building and Zoning Official. (Ord. 630 § 2[16.10.110(2)], 1995)

16.92.030 Permit Requirements – Waivers.

The Permit Requirements of this Chapter may be waived by the Community Development Director for certain small projects as enumerated herein which, by their nature, do not substantially change the total rate, volume, or quality of stormwater runoff within a drainage basin.

- A. Applicability. The Permit Requirements of this Chapter may be waived by the Building Land Zoning Official for the following site development activities:
1. A single-family detached residence and accessory structures on a parcel of record, and not part of a residential subdivision development or not within a sensitive area.
 2. The one time construction or addition of any structure or pavement not exceeding 3,000 square feet of impervious area on or parallel to the ground.
 3. The establishment of a Seasonal Parking Facility pursuant to and in compliance with a Conditional Use Permit obtained in accordance with Chapter 21.04 SMC. A waiver under this subsection once granted shall remain in effect so long as the permit holder does annual before and after soil testing at one location designated by the Building and Zoning Official and the results of said testing show the absence of hazardous materials at clean up concentrations. If testing shows the presence of hazardous materials at concentrations requiring clean up, the Building and Zoning Official may revoke the waiver and/or may direct the permit holder to take such other actions as Best Management Practices would require.
- B. Stormwater Certifications. The permit requirements of this Chapter may be waived by the Community Development Director for those development activities meeting the criteria given in subsection (A) of this Section; provided, the owner/ developer files a notice of intent with the building permit application and files a letter of certification with the Building and Zoning Official, which contains the following:
1. The name, address and telephone number of the developer and owner(s).
 2. A description of the improvement.
 3. The address and legal description of the development.
 4. A statement signed by the owner/developer that certifies that the development activity will:
 - a. Not obstruct the natural flow of stormwater runoff;
 - b. Not drain stormwater runoff onto adjacent lands or wetlands not now receiving runoff from the project ;
 - c. Not concentrate the discharge of runoff onto adjacent lands in such a manner as to present a flooding hazard or cause soil erosion;
 - d. Not adversely affect adjacent lands and structures;
 - e. Provide a positive drainage outlet from the site;
 - f. Not adversely impact adjacent wetlands and/or watercourses; and
 - g. Employ measures to control soil erosion on the site.
 5. Such other information as may be required by the Building and Zoning Official. A Certificate of Occupancy for any development activity may be withheld by the Building and Zoning Official in cases where the owner/ developer fails to provide the stormwater certifications given above or where it can be shown that the owner/developer has not completed the construction consistent with the statements contained in the certifications. (Ord. 765-01 § 12; Ord. 630 § 2[16.10.110(3)(a)], 1995)

16.92.040 Stormwater Management Permits.

A Stormwater Management Permit shall be applied for and obtained from the Community Development Director prior to commencement of development or redevelopment activity on land for which a permit waiver has not been issued and is described in SMC 16.92.030(A).

- A. Applicability. A Stormwater Management Permit is required for the development or redevelopment on land with more than 3,000-square feet of impervious area (roof, parking, etc.).
- B. Application for Stormwater Management Permit. Anyone desiring to develop land shall apply for a stormwater management permit. In addition, the applicant shall submit copies of the following items which shall be prepared by a registered professional Engineer.
1. A location map showing the location of the site with reference to such landmarks as major water bodies, adjoining roads, estates, or subdivision boundaries.
 2. A detailed site plan showing the location of all existing and proposed pavement and structures.
 3. Topographic maps of the site before and after the proposed alterations.
 4. Information regarding the types of soils and groundwater conditions existing on the site.
 5. General vegetation maps of the site before development and a plan showing the landscaping to be performed as part of the project.
 6. Construction plans and specifications necessary to indicate compliance with the requirements of these standards.
 7. Runoff computations based on the most critical situation (rainfall duration, distribution, and antecedent soil moisture condition) using rainfall data and other local information applicable to the affected area.
 8. Storage calculations showing conformance with the requirements of these standards.
 9. Sufficient information for the building and zoning official to evaluate the environmental qualities of the affected waters, and the effectiveness and acceptability of those measures proposed by the applicant for reducing adverse impacts.
 10. Such other supporting documentation as may be appropriate, including maps, charts, graphs, tables, specifications, computations, photographs, narrative descriptions, explanations, and citations to supporting references.
 11. Additional information necessary for determining compliance with the intent of these standards as the building and zoning official may require.
- C. Performance Standards. The Performance Standards for the development or redevelopment on parcels for which a Stormwater Management Permit is required shall be as follows:
1. All projects shall provide treatment of stormwater. Treatment BMP's (Best Management Practices) shall be sized to capture and treat the water quality design storm, defined as the six-month, 24-hour return period storm. The first priority for treatment shall be to infiltrate as much as possible of the water quality design storm, only if site conditions are appropriate and groundwater quality will not be impaired. Direct discharge of untreated stormwater to groundwater is prohibited. All treatment BMP's shall be selected, designed, and maintained according to the adopted Washington State Department of Ecology's Stormwater Management Manual.
Stormwater treatment BMP's shall not be built within a natural vegetated buffer, except for necessary conveyance systems as approved by the local government.
Stormwater discharges to streams shall control streambank erosion by limiting the peak rate of runoff from individual development sites to 50- percent of existing condition two-year, 24-hour design storm while maintaining the existing condition peak runoff rate for the 10-year, 24-hour and 100-year, 24-hour design storms. As the first priority, streambank erosion control BMP's shall utilize

infiltration to the fullest extent practicable, only if site conditions are appropriate and groundwater quality is protected. Streambank erosion control BMP's shall be selected, designed, and maintained according to an approved manual.

2. The cumulative impact of the discharge from the site on downstream flow shall be considered in analyzing discharge from the site.
 3. Where possible, natural vegetation shall be used as a component of drainage design. The manipulation of the water table should not be so drastic as to endanger the existing natural vegetation that is beneficial to water quality.
 4. Runoff from higher adjacent land shall be considered and provisions for conveyance of such runoff shall be included in the drainage plan.
 5. No site alteration shall cause siltation of wetlands, pollution of downstream wetlands, or reduce the natural retention or filtering capabilities of wetlands. This shall be deemed to include the requirement that no herbicides, pesticides, or fertilizers may be used within 150-feet of any stream or aquifer recharge area.
 6. Stormwater runoff shall be subjected to Best Management Practice (BMP) according to the Washington State Department of Ecology's guidelines prior to discharge into natural or artificial drainage systems.
 7. All site alteration activities shall provide for such water retention and settling structures and flow attenuation devices as may be necessary to insure that the foregoing standards and requirements are met.
 8. Design of water retention structures and flow attenuation devices shall be subject to the approval of the building and zoning official pursuant to the standards herein.
 9. Runoff shall be treated to remove oil and floatable solids before discharge from the site in a manner approved by the building and zoning official.
 10. Erosion by water shall be prevented throughout the construction process.
 11. For the purpose of this Section, it is presumed that the lowering of the water table to construct detention/retention basins and to permanently protect road construction does not conflict with the stated objectives of these standards, if all of the following are met:
 - a. The development site is not in a sole-source aquifer protection area or wellhead protection area.
 - b. If ditches, under drains or similar devices are used to lower the water table, the lateral volumetric effect will be calculated, and the volume will be deducted from that allowed for retention areas.
 - c. The high water table may be lowered to two feet below the undisturbed ground in the vicinity of roads for the purpose of protecting the sub-base and base of the roadway.
 - d. The lowering of the water table has no adverse effect on wetlands as defined in this Section.
 - e. The lowering of the water table does not increase flows to the detriment of neighboring lands.
- D. Review Procedure. The Community Development Director will ascertain the completeness of the stormwater management permit application within 10-working days of receipt. Completeness shall only be insofar as all required exhibits have been submitted and shall not be an indication of the adequacy of these exhibits. Within 30-working days after the determination has been made that a completed permit application package has been submitted, the hearing examiner shall approve, with specified conditions or modifications if necessary, or reject the proposed plan and shall notify the applicant accordingly. If the hearing examiner has not rendered a decision within 60-working days after plan submission, the plan shall be deemed to be approved.

The Hearing Examiner, in approving or denying a Stormwater Management Permit Application, shall consider as a minimum the following factors:

1. The characteristics and limitation of the soil at the proposed site with respect to percolation and infiltration.
2. The existing topography of the site and the extent of topographical change after development.
3. The existing vegetation of the site and the extent of vegetational changes after development.
4. The plans and specifications of structures or devices the applicant intends to employ for on-site stormwater retention or detention with filtration, erosion control and flow attenuation.
5. The impact the proposed project will have on the natural recharge capabilities of the site.
6. The impact the proposed project will have on downstream water quantity and, specifically, the potential for downstream flooding conditions.
7. The continuity of phased projects. (Projects that are to be developed in phases will require the submission of an overall plan for the applicant's total land holdings.)
8. The effectiveness of erosion control measures during construction.
9. Permits required by any governmental jurisdiction to be obtained prior to the issuance of a permit under this Section.
10. The adequacy of easements for drainage systems in terms of both runoff conveyance and maintenance.
11. The method of handling upland flow which presently discharges through the site.
12. The maintenance entity responsibility for upkeep of the system upon its completion. (Ord. 630 § 2[16.10.110(3)(b)], 1995)

16.92.050 Automatic Rejection of Permit.

Should 60-working days elapse from the date of mailing by the City's appointed Official a request for additional information or plan amendment without response by the applicant, or his/her Engineer, the City may immediately deny the permit application based on the inadequacy of the information presented. A request by the applicant to hold the application in abeyance shall be considered for a period not to exceed one year from the date of the original application. If no additional information is received within that one-year period, City may deny the application based upon the information presented.

In the event that the plan is approved with specified conditions or modifications, the applicant shall then have the opportunity to amend the plan in accordance with the requirements of the hearing examiner within 60-working days following the mailing date of the request. In the event that the applicant does not comply with the hearing examiner's requirements within 60 working days, the City may deny the application based upon the inadequacy of the plan and information previously presented. (Ord. 630 § 2 [16.10.110(3)(c)], 1995)

16.92.060 Application for Preliminary Review for Modification to Existing Development.

- A. General. Any persons proposing to make any change in the size of any existing structure may submit an application for preliminary review to the Community Development Director to determine the requirement for a Stormwater Management Permit. Those applications that shall be considered by the Building and Zoning Official must be within the following parameters:
 1. There shall be no change in the volume of stormwater nor shall the rate of

- stormwater runoff be affected;
 2. The construction of any structure not otherwise exempt shall not exceed 1,000-square feet of impervious surface on or parallel to the ground;
 3. The development shall not consist of the construction of new paved area;
 4. The development shall not consist of the construction of any drainage improvements; and
 5. The development shall not involve the alteration of the shape of land.
- B. Application Requirements. The application for preliminary review shall contain sufficient information regarding the proposed improvements to adequately define the features of the project which impact the location, rate and the volume of stormwater runoff. Such information shall include, but may not be limited to:
1. Name, address and telephone number of the applicant.
 2. Location map, address, legal description of the proposed improvement.
 3. Statement expressing the scope of the proposed project.
 4. Schedule of proposed improvements.
 5. Sketch showing existing and proposed structures, paving, and drainage patterns.
 6. Erosion control and drainage plan.
- C. Review Procedure. The application for preliminary review shall be reviewed by the Community Development Director to determine whether a project is exempt, whether a permit waiver is possible or whether a water quality permit or stormwater management permit shall be required. Within 30-working days after receipt of the application for preliminary review, the Community Development Director will notify the applicant whether the project is exempt or what further application procedures are to be followed. (Ord. 630 § 2[16.10.110(4)], 1995)

16.92.070 Request for Appeal.

If the applicant feels aggrieved due to rejection or modification, or any other action of the Community Development Director, he or she may petition the Hearing Examiner for a Hearing. Such petition shall be filed within 45-working days from the date of the mailing of the notice. (Ord. 630 § 2[16.10.110(5)], 1995)

16.92.080 Permit Duration.

Any development activity for which a permit is issued under this Chapter that is not commenced within one year from the date of permit issuance and/or which is not complete within two years from the date of permit issuance shall automatically be null and void, unless otherwise extended by the hearing examiner. (Ord. 630 § 2 [16.10.110(6)], 1995)

16.92.090 Plan Adherence.

The applicant shall be required to adhere strictly to the plan as approved. Any changes or amendments to the plan must be approved in writing by the Community Development Director, in accordance with the procedures set forth in SMC 16.92.030 and 16.92.040. After the completion of the project, the Community Development Director may require from the owner/applicant that the Professional Engineer in charge certify compliance with terms of the permit or submit as-built plans, if the completed project appears to deviate from the approved plan. The filing of an application for a permit shall constitute a grant and consent by the owner for enforcement officials to enter and inspect the project to insure compliance with the requirements of this Chapter. (Ord. 630 § 2[16.10.110(7)], 1995)

16.92.100 Maintenance.

- A. General. The installed on-site retention/detention systems and drainage facilities

required by these standards shall be maintained by the owner. The owner shall be required to execute a written System Maintenance Agreement that shall permit the City of Sultan:

1. To have adequate ingress and egress to inspect the premises at reasonable times; and
 2. If necessary, take corrective action should the owner fail to properly maintain the system(s).
- B. Failure to Maintain. Should the owner fail to properly maintain the Stormwater Management System(s), the Community Development Director shall give written notice to the owner of record as appears on the latest property tax rolls by certified mail of the nature of the violation and order the corrective action necessary? Should the owner fail, within 30-working days from the date of the notice, to take corrective action to the satisfaction of the Community Development Director or appeal the Notice and Order, the City of Sultan may enter upon the lands, take such corrective action as the official may deem necessary, and place a lien on the property of the owner for the cost thereof.
- C. City Maintenance. Certain off-site systems as may be identified by the City's Stormwater Management Plan, which are to provide general public benefits, may be accepted by the City for maintenance. The selection of such systems to be maintained shall be made by the Public Works Department. All areas and/or structures to be maintained by the City must be dedicated by plat or separate instrument and accepted by resolution of the City Council. (Ord. 630 § 2[16.10.110(8)], 1995)

16.92.110 Inspections.

- A. The holder of any permit or approval issued subject to a detailed drainage plan shall arrange with the City Engineer for scheduling the following inspections:
1. Initial Inspection: Whenever work on the site preparation, grading, excavations or fill is ready to be commenced, but in all cases prior thereto;
 2. Rough Grading: When all rough grading has been completed;
 3. Bury Inspection: Prior to burial of any underground drainage structure;
 4. Finish Grading: When all work including installation of all drainage structures and other protective devices has been completed;
 5. Planting: When erosion control planting shows active growth.
- B. In certain circumstances, not all of the above inspections may be necessary. It shall be the discretion of the City Engineer to waive or combine any of the above inspections as dictated by conditions. The City Engineer shall inspect the work and shall either approve the same or notify the applicant in writing in which respects there has been failure to comply with the requirements of the approved plan. Any portion of the work which does not comply shall be promptly corrected by the applicant. (Ord. 630 § 2[16.10.110(9)], 1995)

Chapter 16.120 ADMINISTRATION

Sections:

- | | |
|------------|--|
| 16.120.010 | Repealed |
| 16.120.020 | Repealed |
| 16.120.030 | Permits, Terms and Conditions |
| 16.120.040 | When Permit is not Required or May be Waived |
| 16.120.050 | Development Permit Approval Process |
| 16.120.060 | Application for Development Permits |
| 16.120.070 | Regulations |

- 16.120.080 Criteria for Approval of an Application and Issuance of a Permit
- 16.120.090 Occupancy Permit
- 16.120.100 Appeals of Development Permit Decisions, Enforcement and Abatement Proceedings, Appeals of Notices and Orders to Correct and/or Abate
- 16.120.110 Calculation of time – Delivery – Notice to Parties – Filing with the Hearing Examiner

16.120.010 Continuation of Planning Commission

Repealed by Ord. 904-06. (Ord. 630 § 2[16.08.010(1)], 1995)

16.120.020 Planning Commission – Powers and Duties.

Repealed by Ord. 904-06. (Ord. 630 § 2[16.08.010(2)], 1995)

16.120.030 Permits, Terms, and Conditions.

- A. Any Development Permit that is issued shall be subject to the terms and conditions imposed by the Community Development Director to ensure that such development will be in accordance with the provisions of this Unified Development Code.
- B. Reapplication. If an Application for a permit is denied, the Applicant may not submit another Application for development of the same property sooner than 120-calendar days after the date of such denial.
- C. Permit Commencement and Expiration. Any development approved pursuant to this Code shall be commenced, performed, and completed in compliance with the provisions of the permits for such development stipulated by the Community Development Director, Hearing Examiner, or City Council. Any development approved by a permit shall be commenced within 36-months from the date such permit is issued. Failure to complete substantial development within such period shall cause the permit to lapse and render it null and void. No extensions shall be granted. For purposes of this Section, a permit shall be considered issued on the date it is signed by the Community Development Director.
- D. Evidence of Ownership or Legal Interest. Upon filing an Application, the Applicant shall be required to show evidence in writing of his or her legal interest in and the right to perform development upon all property on which work would be performed if the Application is approved, including submission of all relevant legal documents. Where the Applicant is not the owner of the property, the owner must co-sign the Application before it will be accepted for filing. The Applicant shall have the burden of demonstrating to the satisfaction of the Community Development Director the current validity of the legal interest upon which he or she bases any part of the Application before such Application can be deemed to be complete. (Ord. 630 § 2 [16.08.020(2)], 1995)

16.120.040 When Permit is Not Required or May be Waived.

- A. Notwithstanding any provision in this Unified Development Code to the contrary, no minor Development Permit shall be required pursuant to this Code for activities related to the repair or maintenance of an object or facility, where such activities shall not result in an addition to or enlargement or expansion of such object or facility. However, this does not preclude the requirement for a building permit for such activity.
- B. Where immediate action by a person is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster or serious accident, or in other cases of emergency, the requirement of obtaining a Development Permit prior to initiating such action under this Section may be waived by the Community Development Director. The Applicant shall notify the Community Development Director in writing of the

type and location of the work, the length of time necessary to complete the work, and the name of the person or public agency conducting the work. This shall be done within 30-days following the disaster, accident, or other emergency. However, this shall not preclude the requirement for building permits for such activity. (Ord. 630 § 2[16.08.020(3)], 1995)

16.120.050 Development Permit Approval Process.

Permits	Administrative Approval	Public Hearing Required	Council Action	Appeals

16.120.060 Application for Development Permits.

All Applications for Development Permits shall contain at least the following information; provided, however, that the Applicant may request a waiver of any of the following requirements. Unless the Applicant can prove to the satisfaction of the Community Development Director’s office that a waiver is appropriate, he or she shall supply the following information:

- A. Ten (10) copies of a site plan, one of which shall be a mylar reproducible of the property to a scale of 100-feet to one inch, prepared by a Registered Engineer, Architect or Land Surveyor illustrating the proposed development of the property and including, but not limited to the following:
 - 1. Topographical features showing present grades and any proposed grades if present grades are to be altered. Unless otherwise required by the Community Development Director, contours at an interval not greater than five feet shall be shown;
 - 2. Property boundary lines and dimensions including any platted lot lines within the property;
 - 3. Location and dimensions of all existing and proposed buildings, including height in stories and feet and including total square feet of ground area coverage;
 - 4. Location and dimensions of all existing and proposed driveways and entrances, minimum yard dimensions, and where relevant, relation of yard dimensions to the height of any side of any building or structure;
 - 5. Location and dimensions of parking stalls, access aisles, and total area of lot coverage of all parking areas and driveways;
 - 6. Location and dimension, including height clearance, of all off-street loading areas;
 - 7. Location, designation and total area of all usable open space, including use of any paved areas as distinguished from grass, sodded, or other landscaped areas;
 - 8. Location and height of fences, walls (including retaining walls), or screen planting, and the type or kind of building materials or planting proposed to be used;
 - 9. Proposed surface stormwater drainage treatment;
 - 10. Location of easements or other rights-of-way; and
 - 11. Location and designation of any open storage space.
- B. Ten (10) copies of a location map, at a scale of 200-feet to one inch showing, at a minimum, the uses of all property within 200-feet of the subject property, including the following:
 - 1. All streets, alleys or other public rights-of-way, public parks and places and all lots and lot lines, drainage ways, waterways, and easements;
 - 2. All structures and the principal use of each structure, including the type of

- residential, commercial, or industrial use; and
- 3. All off-street parking and loading areas as may be significant to the Application in question.
- C. Any other information as may be required by the Community Development Director to determine that the Application is in compliance with this Unified Development Code shall be furnished, including but not limited to wetlands, aquifer or groundwater recharge zones, floodplains, elevations, profiles, perspectives, sign placement, vegetation, landscaping, or any other material necessary for a complete understanding of the Application.
- D. A statement in writing signed by the Applicant stating that the information as shown on the plans, maps, and Application is true and correct. Any failure to comply with the provisions of this Section shall be good cause to deny the Application and/or to revoke any permit which may have been issued for any building or use of land. (Ord. 630 § 2[16.08.020(7)], 1995)

16.120.070 Regulations.

The Community Development Director shall, in the manner required by law and after Public Hearings, adopt such rules and regulations pertaining to the issuance of permits as it deems necessary. The Community Development Director may thereafter, in the manner required by law, and from time to time, after Public Hearings, modify or adopt additional rules and regulations as deemed necessary to carry out the provisions of this Unified Development Code; provided, any such rules and regulations issued pursuant to this Code may be amended or repealed by the City Council in accordance with the appropriate provisions of the Sultan Municipal Code. Such regulations shall include but are not limited to the following:

- A. Procedures for the submission, review and approval or denial of permit Applications, and the form of Application for permits. The Community Development Director shall devise a temporary Application form that shall be used upon enactment of this Unified Development Code until such time as rules and regulations are adopted;
- B. Information to be required in the Application, including without limitation, proof of legal interest in the property, authority to sign the Application, drawings, maps, data, and charts concerning land and uses and areas in the vicinity of the proposed development, and appropriate supplementary data reasonably required to describe and evaluate the proposed development and to determine whether the proposed development complies with statutory criteria under which it might be approved;
- C. The payment of reasonable Application, processing, permit and other fees necessary for the proper administration of the permitting process;
- D. Standards, in addition to those set out in this Code, for determining whether a project requires a major project permit;
- E. Requirements for the conduct and continuance of Public Hearings and the methods of providing public notice on major project permits. A public notice shall, at a minimum, state the nature and location of the proposed development, the time and place of the Public Hearing, the date of the Public Hearing (which shall be, in any event, at least 10-working days following the date that the Hearing was first advertised), and shall be advertised in a newspaper of general circulation, and, in addition, be given to the Applicant, any person who requests such notification in writing, any person who the Building and Zoning Official determines would be affected by or interested in such development, and the owner(s) of any/all lot(s) within 500-feet of the site of the proposed development. Additionally, a sign shall be posted on the property at least 10-working days prior to the date of the Public Hearing by the Building and Zoning Official at a location that can be easily seen by the general public indicating the date, time, and location of the Public Hearing and the purpose for which the Hearing is being held;
- F. Contents of permits;

- G. Notifications of Decisions on Applications;
- H. Notices of Completion and certificates of acknowledgment of compliance;
- I. Modification and revocation of permits; and
- J. Transfer or assignment of permits. (Ord. 630 § 2[16.08.020(8)], 1995)

16.120.080 Criteria for Approval of an Application and Issuance of a Permit.

- A. A Land Use Development Permit, following the process identified in SMC 16.120.050; shall be granted by the Community Development Director or the Hearing Examiner; provided, that it is found, based upon substantial evidence in the record that the development complies with each of the following criteria:
 - 1. The development is consistent with the goals, policies, requirements, and performance standards of this Unified Development Code and other applicable laws and regulations;
 - 2. The development project as proposed incorporates, to the maximum extent feasible, mitigation measures to substantially lessen or eliminate all adverse environmental impacts of the development; and
 - 3. The Applicant has presented certification that the Applicant has filed and paid all taxes, penalties and interest, and that the Applicant has satisfactorily made agreement to pay the taxes.
- B. The issuance of a Land Use Development Permit shall also require that the Applicant agree in writing to:
 - 1. Comply and perform to all conditions of approval; and
 - 2. Carry out minimum improvements in accordance with the provisions of this Unified Development Code and all standards of this title.
- C. Improvement Guarantees. Contemporaneous with the issuance of a permit, or upon approval of a plat, subdivision or other approval to divide land, to insure the Applicant's compliance with subsection B of this Section and to guarantee future compliance and performance, the Applicant shall:
 - 1. Comply with all conditions of approval and carry out all minimum improvements as required to the satisfaction of the Council;
 - 2. If acceptable or required by the Council, furnish the City with a Bond or other security sufficient to secure the estimated cost of construction and installation of all required road and other improvements to the satisfaction of the City Engineer and/or Council and compliance with the conditions of approval. The amount and time limitation of any Bond or other device shall be determined by the Council within 30-days of permit issuance or approval. The principal shall complete construction and installation of all improvements and comply with all conditions of approval by the date stated in the security, and in the event that such does not occur, the full amount of the security shall be forfeited to the City. The Council may forfeit all or any portion of the security before its expiration date, if the Applicant is not making reasonable efforts to complete the work within the term of the security;
 - 3. Furnish a maintenance bond or other security satisfactory to the Council securing to the City the successful operation of the improvements and any mitigation as required by the conditions of approval for an appropriate period of time up to two (2) years after completion of improvements, or final plat approval, as the case may be. Upon expiration of the stated period and successful performance of the improvements and mitigation, this Maintenance Bond shall be release and exonerated.
- D. Surety Requirement. Any bond as provided herein shall be assured by two or more sureties acceptable to the Council or with a surety company as surety. The City is empowered to enforce such bonds by all appropriate legal and equitable remedies. (Ord. 779-02; Ord. 630 § 2[16.08.030], 1995)

16.120.090 Occupancy Permit.

- A. No land area shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until an occupancy permit has been issued by the Community Development Director, stating that the premises, building, or other development complies with all provisions of this Code; except that in the case of an alteration that does not require vacating the premises or where parts of the premises are finished and ready for occupancy before the completion of the alteration, or in the case of a new structure, before its completion, a conditional occupancy permit may be issued.
- B. No change or extension of use or no alteration shall be made in a nonconforming use of a building or land or water area without a building permit having first been issued by the Community Development Director that such change, extension or alteration is in conformity with the provisions of this Code.
- C. As-Built Plan Submittals. After completion of all required improvements and prior to final acceptance of said improvements, the subdivider shall submit:
 - 1. To the City as-built drawings reflecting any changes to previously approved construction drawings. No changes in improvements may be made without prior approval of the City Council;
 - 2. To the Utility Superintendent and Fire Department, two (2) copies of the plat and drawings showing the actual location of all mains, hydrants, valves and other fire improvements;
 - 3. A statement sworn to by the subdivider and his Registered Engineer that the drawings show the actual location of the improvements required to be shown therein. No occupancy permit shall be issued until any and all required as-built plans have been submitted and approved by the Building and Zoning Official.
- D. Within 10-days from the date that an Applicant requests, in writing, that an Occupancy Permit be issued on his/her development project, the Building and Zoning Official shall render a decision as to whether or not said Occupancy Permit is to be issued. If the decision is not to issue the Occupancy Permit, the Community Development Director shall so notify the Applicant including the reasons for denial of the permit. If no Occupancy Permit has been issued within 10-working days of the written request thereof and the Community Development Director has not informed the Applicant of approval or denial in writing; it shall be deemed that the Building and Zoning Official approves the request and the Applicant may legally occupy the premises. (Ord. 630 § 2[16.08.040], 1995)

16.120.100 Appeals of Development Permit Decisions, Enforcement and Abatement Proceedings, Appeals of Notices and Orders to Correct and/or Abate.

Notwithstanding any provision of this Unified Development Code to the contrary, any aggrieved person may file an Appeal of a Decision or Action by the Community Development Director taken pursuant to this Code within 10-calendar days thereof with the Hearing Examiner and such appeal shall be governed solely by the provisions of this Section.

- A. Procedure on Appeal. The Hearing Examiner, after having been duly notified that an Appeal has been filed, shall authorize the City to give public notice of a Public Hearing on the Appeal in a newspaper of general circulation. Such public notice shall be in the same form and shall have the same filing date requirements as prescribed in Chapter 16.124 SMC. The City shall also serve persons notice of such Hearing who own property within 300-feet of the subject property, the Applicant for the Development Permit, the aggrieved person (if different than the Applicant), any person who has requested in writing to be notified of such Public Hearing date, the Building and Zoning Official, and the Planning Commission.

- B. Effect of Filing on Appeal. The filing of a Notice of Appeal shall stay any proceedings in furtherance of the action appealed, unless the Community Development Director certifies in writing to the Hearing Examiner and the Applicant that a stay poses an imminent peril to life or property, in which case the stay shall not stay further proceedings. The Hearing Examiner may review such certification and grant or deny a stay of the proceedings.
- C. Public Hearing. A Public Hearing on an Appeal shall be held by the Hearing Examiner within 20-working days after the Appeal is filed with the Examiner and an action shall be taken by the Hearing Examiner within 15-working days after the conclusion of such Public Hearing. The Hearing Examiner may reverse, affirm or modify the decision, determination or interpretation appealed and in so modifying, shall be deemed to have all of the powers of the Building and Zoning Official, from whichever the appeal is taken, including the power to impose reasonable conditions to be complied with by the Applicant. The Hearing Examiner shall notify the Community Development Director, the Applicant for the permit, and the person or persons who filed the Appeal of its decision by certified mail. Such notice shall be sent within five (5) working days of the Hearing Examiner's action.
- D. Rights of Parties. Consistent with rules adopted by the Hearing Examiner, Appeal Hearings before the Hearing Examiner shall allow the parties to:
 - 1. Call and examine witnesses on any matter relevant to the issues of the Hearing;
 - 2. Introduce documentary and physical evidence;
 - 3. Impeach any witness regardless of which party first called them to testify;
 - 4. Rebut evidence against them;
 - 5. Represent themselves or be represented by anyone of their choice who is lawfully permitted to serve in such capacity. (Ord. 769-01 §§ 1, 2, 3; Ord. 630 § 2[16.08.050], 1995)

16.120.110 Calculation of Time – Delivery – Notice to Parties – Filing with the Hearing Examiner.

- A. Whenever this title states that an Action or Notice must be given in a certain number of calendar days, if the last calendar day for the Action or Notice is a weekend day or a federally recognized holiday; then the last calendar day shall be construed to include the first working day after the weekend or holiday; and the deadline shall be 5:00 p.m. current local time of that first working day.
- B. Whenever this title states that an action or notice must be given "within" a period of time from a Decision, Action or Notice, the first calendar day for the counting of the calendar days shall be as follows:
 - 1. If the number of days involved is less than 15-calendar days, the first day shall be:
 - a. If the Notice or Decision is personally served on the party, then the day after service; and
 - b. If the Notice or Decision is mailed, then the third day after the date the Notice or Decision is deposited into the United States mail properly addressed with required postage;
 - 2. If the number of days involved is 15-calendar days or more, the first day shall be:
 - a. If the Notice or Decision is personally served on the party, the day after service; and

- b. If the Notice or Decision is mailed, then the day after the Notice or Decision is deposited into the United States mail properly addressed with required postage.
- C. Each Decision or Notice shall contain a statement concerning rights to Contest or Appeal the Decision or Notice and among other information the statement shall state the date of the Notice or Decision, the date the Appeal, Contest or appeal period is expected to begin, the last date and time to file an Appeal or notice when the party to whom the notice must go is open for business, and the location to file an Appeal or Notice.
- D. In the event the statement specified in subsection C of this Section contains an error, the party relying on the statement shall be entitled to the longer time. Therefore, if the "last date" in the statement is earlier than the time as calculated under this Section, the party shall be entitled to the time provided by this Section. But if the "last date" in the statement is later than the date that would be calculated under this Section, the party shall be entitled to, and the actual time shall be extended to the date and time set out in the statement; provided, however, that if the error is in the statement of the year, the correct year shall apply.
- E. Whenever this title states that something must be filed with the Hearing Examiner, filing shall be accomplished by filing with the Clerk/Treasurer of the City. The date of filing shall be the date of actual delivery to, or receipt of mail by, the City Clerk/Treasurer. (Ord. 790-02)

Chapter 16.124 PUBLIC HEARINGS

Sections:

- 16.124.010 General Regulations on Public Hearings
- 16.124.020 Transcription of Testimony
- 16.124.030 Appearance of Parties

16.124.010 General Regulations on Public Hearings.

- A. The City shall, at applicant's expense as provided in the Annual Fee Schedule, no less than 10-days before the Public Hearing (1) mail notice to each taxpayer of record within 300-feet of any portion of the boundary of the proposed project; provided further, that owners of real property located within 300-feet of any portion of the boundaries of such adjacently located parcels of real property that are owned by the owner of real property proposed to be subdivided shall also be notified; and (2) post on the subject property at least two signs, one sign on each frontage abutting a public right-of-way or at the point of access to the property. The property shall remain posted until all Appeal periods have expired. Signs for posting shall be provided to the Applicant by the City at a cost identified in the Annual Fee Schedule. Such mailing and posting shall be evidenced by submittal of a verified statement regarding the date of mailing and date and location of posting.
- B. The City Clerk/Treasurer or designee shall provide notice of Hearing, no less than 10-days before the Public Hearing, in the following manner:
 - 1. Publication of one notice in the official newspaper of the City;
 - 2. In the case of a subdivision, the Clerk/Treasurer shall mail notice to any City or county whose municipal boundaries are within one mile of the proposed subdivision; to the Department of Transportation on every proposed subdivision located adjacent to the right-of-way of a state highway and to any other federal, state, or local agency as deemed appropriate by the City Clerk/Treasurer.
- C. All Hearing Notices required by this section shall include the date, time, and place of the Public Hearing, and a description of the location of the proposal in the form of either a vicinity location sketch or a written description, other than a legal description.
- D. For those Public Hearings under Chapter 16.128 SMC, the City shall e-mail

notice to known parties of interest or in the alternative mail notice in self-addressed stamped envelopes provided by known parties of interest. (Ord. 862-04 § 1; Ord. 821-03 § 2; Ord. 785-02 § 3; Ord. 630 § 2[16.09.010], 1995)

16.124.020 Transcription of Testimony.

In the Hearing before the Planning Board, Hearing Examiner or City Council, all testimony, objections thereto and thereon shall be taken down by a reporter employed for that purpose or recorded by a recording machine set up for that purpose. (Ord. 630 § 2[16.09.020], 1995)

16.124.030 Appearance of Parties.

Upon the Hearing before the Planning Board, Hearing Examiner or City Council, any party may appear in person or be represented by agent or attorney. (Ord. 630 § 2[16.09.030], 1995)

Section 2. 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 3. 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:

CITY OF SULTAN
WASHINGTON
ORDINANCE NO. 1052-09

**AN ORDINANCE OF THE CITY OF SULTAN,
WASHINGTON, ADOPTING AMENDMENTS TO SULTAN
MUNICIPAL CODE TITLE 21, OTHER LAND USES,
REMOVING THE CITY COUNCIL FROM QUASI-JUDICIAL
PROCESS, VESTING QUASI-JUDICIAL PROCESS IN THE
HEARING EXAMINER, CLARIFYING THE TITLES OF
VARIOUS RESPONSIBLE OFFICIALS; AND
ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, the City of Sultan has adopted the Hearing Examiner system for review of various land use applications as authorized by Chapter 35A-63 RCW, and

WHEREAS, Sultan Municipal Code (SMC) Chapter 2.26.020 provides that the Hearing Examiner shall “interpret, review and implement land use regulations in accordance with the procedures set forth herein” for all land use matters of a Quasi-Judicial nature, and

WHEREAS, Portions of the SMC, including Title 21, require Amendment to fully implement the mandate of Chapter 2.26.020, and

WHEREAS, The Planning Board held a Public Hearing on the Amendments required to fully implement the Hearing Examiner system on April 21, 2009, and received no testimony in opposition to the adoption of the proposed Amendments, and

WHEREAS, The Planning Board, recommended that the City Council adopt the proposed Amendments, and

WHEREAS, the City provided the Department of Community Trade and Economic Development (CTED) the required 60-day notice, and

WHEREAS, the CTED notice period for public and agency input expired on June 15, 2009 with no input received, and

WHEREAS, this Amendment is a Level III Amendment to Development Regulations, the procedures for which require a Hearing at the Planning Board and does not require an additional Hearing at the City Council, and

WHEREAS, the City Council reviewed the proposed Amendments during a discussion Agenda item at its May 28, 2009 Meeting and determined to proceed with the Planning Board's Recommended adoption process without a further Public Hearing at the Council level, and

WHEREAS, it is the intent of the Council to fully implement the Hearing Examiner system for Quasi-Judicial Land Use Procedures.

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

Section 1. The CITY OF SULTAN MUNICIPAL CODE TITLE 21, OTHER LAND USES, is hereby AMENDED AS FOLLOWS:

CHAPTER 21.04

CONDITIONAL USE PERMITS

Sections:

<u>21.04.010</u>	Purpose
<u>21.04.020</u>	Uses Requiring a Conditional Use Permit
<u>21.04.030</u>	Application – Requirements and Fees
<u>21.04.050</u>	Criteria
<u>21.04.060</u>	Expiration and Renewal
<u>21.04.070</u>	Revocation of Permit
<u>21.04.080</u>	Performance Bond and Other Security
<u>21.04.090</u>	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 approve. (Ord. 690-98)

21.04.020 Uses requiring a Conditional Use Permit.

The following are the uses that 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.

- A. Application for Conditional Use Permits shall be filed with the Planning Department on forms prescribed by that office.
- B. A filing fee in the amount set by the Fee Schedule adopted by the City Council shall accompany all applications.
- C. The Hearing Examiner will conduct Public Hearings on Conditional Uses and may Deny, Approve, or Approve with Conditions.

- D. Conditional Use Applicants must adhere to all applicable public notification requirements.
- E. Denial of Conditional Use Permit Applications is appealable to Superior Court as provided in SMC 2.26.160.

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)

Section 21.04.052 and 21.04.054 moved to Section 16.24.020

21.04.060 Expiration and Renewal.

- A. A Conditional Use Permit shall automatically expire one (1) year after a Notice of Decision approving the permit is issued unless a Development Authorization or Building Permit conforming to plans for which the CUP was granted is obtained within that period of time.
- B. A Conditional Use Permit shall automatically expire unless substantial construction of the proposed development is completed within two (2) years from the date a Notice of Decision approving the permit is issued.
- C. The Hearing Examiner may authorize longer periods for a Conditional Use Permit if appropriate for the project.
- D. The Hearing Examiner 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. No Public Hearing is required for a renewal of a Conditional Use Permit. (Ord. 690-98)

21.04.070 Revocation of Permit.

- A. The Hearing Examiner 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 (1) 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 Hearing Examiner 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 and reporting for petition to revoke or modify a Conditional Use Permit 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 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 (6) months from the date of denial. (Ord. 690-98)

**Chapter 21.06
BINDING SITE PLANS**

Sections:

- 21.06.010 Purpose
- 21.06.020 Applicability
- 21.06.030 Application Submittal
- 21.06.040 Approval Procedure
- 21.06.050 Binding Site Plan Components
- 21.06.060 Recording Requirements
- 21.06.070 Development Requirements
- 21.06.080 Standards for Review of a Commercial or Industrial Binding Site Plan
- 21.06.090 Standards for Review of a Manufactured Home Park or Condominium Development
- 21.06.100 Amendment, Modification, and Vacation

21.06.010 Purpose.

The purpose of this Chapter is to:

- A. Specify the criteria used by the City of Sultan to review and approve Binding Site Plans.
- B. Provide an alternative method of land division for the sale or lease of commercial or Industrial Zoned properties, condominiums and manufactured home parks as provided for in RCW 58.17.035 that is more flexible than traditional subdivision procedures.
- C. Provide for the site planning and regulation of nonresidential site development not requiring land division within the Sultan Scenic Business Park. (Ord. 851-04 § 1; Ord. 719-00)

21.06.020 Applicability.

The Binding Site Plan process may be used for:

- A. The division of land for the purpose of sale or lease of lots for commercial or industrial purposes.
- B. The division of land for the purpose of developing residential condominiums or manufactured home parks.
- C. The Binding Site Plan process is required for all proposed commercial and

industrial development within the Sultan Scenic Business Park, excluding additions or expansions of existing developments involving less than 12,000- square feet of new building area. (Ord. 882-05 § 1; Ord. 851-04 § 1; Ord. 719-00)

21.06.030 Application Submittal.

Each application for Binding Site Plan approval shall contain five (5) copies of all complete application forms, plans and reports. A complete application must include:

- A. Fees. The Applicant shall pay the required fees as set forth in the City's Fee Schedule or other applicable Resolutions or Ordinances when submitting a Binding Site Plan.
- B. Application form and Declaration of Ownership.
- C. Title report (dated within the last 30-days).
- D. Vicinity Map of the area where the site is located.
- E. Environmental Checklist.
- F. Landscape Plan.
- G. Parks and Open Space Plan.
- H. A Preliminary Site Plan to a scale of 30-feet to one inch, stamped and signed by a Registered Engineer, Architect or Land Surveyor illustrating the proposed development of the property and including, but not limited to, the following:
 - 1. Name or title of the proposed Binding Site Plan;
 - 2. Date, scale and north arrow;
 - 3. Boundary lines and dimensions including any platted lot lines within the property;
 - 4. Total acreage;
 - 5. Property legal description;
 - 6. Existing zoning;
 - 7. Location and dimensions of all existing and proposed:
 - a. Buildings, including height in stories and feet and including total square feet of ground area coverage;
 - b. Parking stalls, access aisles, and total area of lot coverage of all parking areas;
 - c. Off-street loading area(s);
 - d. Driveways and entrances;
 - e. Density of residential uses;
 - 8. Proposed building setbacks in feet;
 - 9. Location of any regulated sensitive areas such as wetlands, steep slopes, wildlife habitat or floodplain and required buffers;
 - 10. Proposed transfer of floor area from critical areas;
 - 11. Location and height of fences, walls (including retaining walls), and the type or kind of building materials or planting proposed to be used;
 - 12. Location of any proposed monument signs;
 - 13. Proposed surface stormwater drainage treatment;
 - 14. Location of all rights-of-way and easements and uses indicated;
 - 15. Location of existing and proposed utility service;
 - 16. Existing and proposed grades shown in five-foot interval topographic contour lines;
 - 17. Fire hydrant location(s);
- I. Any other information as required by the Community Development Director shall be furnished, including but not limited to traffic studies, wetland reports, elevations, profiles, and perspectives, to determine that the Application is in compliance with the Sultan Municipal Code. (Ord. 851-04 § 1; Ord. 719-00)

21.06.040 Approval Procedure.

- A. Pre-Application Meeting. A Pre-Application Meeting with City Staff is required before an Application for a Binding Site Plan is submitted to the City for consideration. The purpose of the Pre-Application Meeting is to provide the Applicant with a preliminary list of issues, code requirements, and application requirements. Pre-Application discussion will be prepared by Staff.
- B. Action by the Community Development Department. If the Binding Site Plan Application is complete and the fee is paid, the Community Development Department shall accept the Application and conduct a City Review.
- C. Action by Other City Departments. The Community Development Department will circulate copies of the proposed Binding Site Plan to relevant City Departments and affected agencies. The Department or agency shall review the Application and furnish the Community Development Department with a report as to the effect the proposed Binding Site Plan may have upon their area of responsibility and expertise. The reports submitted shall include recommendations as to the extent and type of improvements provided.
- D. Notice requirements shall be in accordance with Chapter 16.124 SMC.
- E. Administrative Review. If the Binding Site Plan proposes development of a site area of two (2) acres or less, four (4) lots or less, a building area of 40-percent of the site area or less, and a single primary structure with minimal accessory structure(s), City Staff shall issue a Decision to Approve, Conditionally Approve, or Deny the Preliminary Binding Site Plan approval.
- F. Hearing Examiner Review. If a Binding Site Plan proposes development of a site area of more than two (2) acres, more than four (4) lots or a building area greater than 40-percent of the site area, or includes more than one primary structures, the Hearing Examiner shall hold a Public Hearing to consider the Staff recommendation, Applicant and public comments and thereafter issue a decision to approve, conditionally approve, or deny the preliminary Binding Site Plan proposal.
- G. Preliminary approval of the Binding Site Plan by the Hearing Examiner under subsection (F) of this Section or Community Development Director under subsection (H) of this Section shall constitute authorization for the Applicant to take the necessary steps to meet the conditions imposed by the City before commencing the Final Binding Site Plan review process.
- H. The Final Binding Site Plan Approval shall be granted by the City Council or Community Development Director as provided for under Administrative Review, after the project conditions have been fulfilled. If material changes have occurred in the project, the City Council may return it to the Hearing Examiner for review and recommendation. (Ord. 851-04 § 1; Ord. 719-00)

21.06.050 Binding Site Plan Components.

A Binding Site Plan includes the following:

- A. A Record-of-Survey and drawing(s) which identify the location of all proposed and required site improvements including but not limited to: streets, roads, easements, buildings, utilities, open spaces, parks, parking, landscaping, signs, drainage facilities and other site improvements specified by the City of Sultan.
- B. A "Development Agreement" incorporating the conditions of approval, limitation for the use of the land, and improvement guarantees to ensure compliance of all conditions of approval for the Binding Site Plan. (Ord. 851-04 § 1)

21.06.060 Recording Requirements.

When the proposed Binding Site Plan receives final approval, by the City Council or Community Development Director, the Applicant, within 30-days from the date of approval by the Council, shall record the Binding Site Plan and Development Agreement approved by the City Council, if required, with the Snohomish County Auditor. The Applicant shall furnish the City with three (3) copies and a digital copy of the recorded Binding Site Plan and Development Agreement (if required) within five (5) working days of recording, and the Snohomish County Assessor shall be furnished one paper copy. (Ord. 851-04 § 1; Ord. 719-00)

21.06.070 Development Requirements.

- A. Said lots shall not be sold or transferred unless the Binding Site Plan and a record of survey map, which is prepared in compliance with Chapter 58.09 RCW and which includes a legal description of each lot being created, is approved by the Community Development Director and filed for record in the Snohomish County Auditor's office. The Binding Site Plan and all of its requirements shall be legally enforceable on the purchaser or other person acquiring ownership of the lot, parcel, or tract.
- B. All development must be in conformance with the recorded Binding Site Plan. Any development, use or density which fails to substantially conform to the site plan as approved constitutes a violation of this Chapter and is punishable as a gross misdemeanor. (Ord. 851-04 § 1; Ord. 719-00)

21.06.080 Standards for Review of a Commercial or Industrial Binding Site Plan.

- A. The City shall review the proposed Binding Site Plan to determine whether it meets the following criteria:
 - 1. Whether the Binding Site Plan and development of the parcel relates to all elements of the Comprehensive Plan.
 - 2. Whether the proposed Binding Site Plan meets all applicable Performance Standards and Zoning Regulations.
 - 3. Whether the Binding Site Plan takes into account the topography, drainage, vegetation, soils and any other relevant physical elements of the site.
 - 4. Whether adequate public services are available.
 - 5. Examination of the project through the SEPA process and a determination of whether the Binding Site Plan complies with the SEPA requirements.
- B. In addition to the requirements of the Sultan Municipal Code, the following standards shall apply to commercial Binding Site Plans:
 - 1. Division lines between lots in commercial BSP shall be considered lot lines under the Sultan Municipal Code.
 - 2. Each such tract or lot created by such BSP shall have a designated front lot line and one rear lot line including those which have no street frontage.
 - 3. All tracts, parcels and lots created by a BSP shall be burdened by an approved maintenance agreement for access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
 - 4. When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the owner and City allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.

5. If the City so elects, the City shall be granted power to maintain the access easements and file liens on the property for collection of the costs incurred for maintenance. The power to maintain such access ways shall impose no duty on the City to maintain the access way.
6. The BSP shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the City may terminate occupancy of such properties until the access easement ways are adequately maintained.
7. Freestanding signage may be off of the tract, lot or parcel where the business is located as long as City sign requirements are met within the area encompassed by the BSP.
8. Parking requirements for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the areas of the BSP. Prior to building permit approval, parking agreements will be approved by the City.
9. Landscaping requirements will be met for each phase of the BSP. Landscaping requirements may be met for area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants. (Ord. 851-04 § 1; Ord. 719-00)

21.06.090 Standards for Review of a Manufactured Home Park or Condominium Development.

- A. The City shall review the proposed Binding Site Plan to determine whether it meets the following criteria:
 1. Whether the Binding Site Plan and development of the parcel relates to all elements of the Comprehensive Plan.
 2. Whether the proposed Binding Site Plan meets all applicable Performance Standards and Zoning Regulations.
 3. Whether the Binding Site Plan takes into account the topography, drainage, vegetation, soils and any other relevant physical elements of the site.
 4. Whether adequate public services are available.
 5. Examination of the project through the SEPA process and a determination of whether the Binding Site Plan complies with the SEPA requirements.
- B. Development standards for condominiums including residential units or structures shall meet either the standards set out in subsections (B)(1) or (2):
 1. All lots and developments shall meet the minimum requirements of the SMC. Phase or lot lines shall be used as lot lines for setback purposes under the Zoning Code.
 2. Condominiums may be developed in phases where ownership of the property is unitary but some structures are to be completed at different times or with different lenders financing separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - a. By a joint obligation to maintain any and all access ways. The City shall have no obligation to maintain such access ways.
 - b. The City shall require easements for access to the property to allow for emergency services and utility inspections as defined in the Development Agreement.
 - c. Reciprocal easements for parking shall be provided to all tenants and owners.
 - d. The Developer must submit a Binding Site Plan schedule for completion of all phases.

- e. Phase lines must be treated as lot lines for setback purposes under the Zoning Code unless the property owner will place a covenant on the Binding Site Plan that the setback areas for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule.
- f. All public improvements shall be guaranteed by Bond or other security satisfactory to the City Engineer or designee.
- g. All built phases in a condominium Binding Site Plan shall have a joint and several obligations to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners. (Ord. 851-04 § 1; Ord. 719-00)

21.06.100 Amendment, Modification, and Vacation.

Amendment, modification and vacation of a Binding Site Plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new Binding Site Plan Application, as set forth in this Chapter. The vacated portion shall constitute one lot unless the property is subsequently divided by an approved subdivision or short division. (Ord. 851-04 § 1; Ord. 719-00)

Section 2. 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 3. 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