

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: D-2
DATE: July 23, 2009
SUBJECT: Water/Sewer Connection Policy
CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the city council is a continued discussion of the proposed water/sewer connection procedures (Attachment A).

Staff is seeking direction from council on:

- Procedure #6 – establishing when payment of water and sewer connection fees (general facilities charge) is due
- Procedure #7 – payment of a monthly fee per lot (holding charge).

STAFF RECOMMENDATION:

Discuss the staff recommendation

- Establish payment of water and sewer connection fees as part of the final plat approval process
- Delete the proposed requirement for a “holding” charge,
- Set certificate expiration with preliminary plat lapse concurrent with SMC 16.28.390

With council approval, staff would return with a resolution adopting the revised procedures in Attachment A and ordinances amending the appropriate sections of Sultan Municipal Code.

SUMMARY:

The city council considered this issue on June 9, 2009. Staff provided a draft Water/Sewer Availability Procedure (Attachment A) to the council for review and discussion. The council discussed the water sewer availability procedures and directed staff to return with a final procedure for council approval.

Following the council meeting, city staff discussed the proposed procedures with members of the development community and city attorney.

The majority of the discussion was about the timing of the general facility charge and proposed holding charge. These issues are addressed in procedure #6 and #7. City staff and the attorney reviewed two court cases – Carrillo v. City of Ocean Shores and Holmes Harbor Sewer District v. Holmes Harbor Home Building. In these cases, the Washington Court of Appeals and Washington Supreme Court ruled that required water and sewer availability charges and monthly charges against unimproved lots, not connected to utility services, were unconstitutional property taxes and not permissible regulatory fees.

After reviewing these court cases, staff recommend:

- Amending procedure #6 to require payment of water and sewer connections charges (general facility charge) at the time of final plat approval
- Deleting procedure #7 and dropping the proposal to adopt certificate holding charge to cover the cost of debt service needed to serve new growth.
- Setting the expiration of certificates of availability concurrent with preliminary plat lapse under SMC 16.28.390.

DISCUSSION:

The city does not have a written policy or procedure defining when the general facility charge must be paid. Currently, the city collects the water and sewer general facility charge anytime from preliminary plat approval up to certificate of occupancy. This approach creates a problem for the city in two ways.

First, general facility charge payments needed to serve new growth are delayed putting a greater burden on current customers to cover the cost of debt service for improvements that serve both current and future customers. The city is currently experiencing a cash flow problem. New improvements are needed at the waste water treatment plant to serve future growth, but there are no revenues coming to the city to pay for the needed improvements. Under the current procedures, payment of the general facilities charge could be delayed until building occupancy 15 or more years from now.

Second, because at final plat the systems are in place at the building lot, home builders frequently access the water and sewer services without the city's knowledge. The trigger for creating a utility account is payment of the general facility charge. When the general facility charge isn't collected until certificate of occupancy the city often is unaware that services are being used without billing.

The proposed procedures are intended to collect the general facility charge early enough in the process to help pay for needed improvements to serve growth and trigger creation of a utility account for new building lots.

Procedure #6

Under the original proposal, procedure #6 required payment of water and sewer connections at the time of preliminary plat approval or final approval when preliminary approval is not required (i.e. conditional use permit).

Preliminary plat approval requires conformance to the general purposes of the comprehensive plan; planning standards and specifications; and provision for public improvements. At preliminary plat, requirements for construction of all infrastructure improvements including plan submittals, inspections and bonding are established. A preliminary plat is effective for five years from the date of approval. During preliminary plat the developer is generally working to install the required utility improvements and prepare the building lots. Usually, there is no service to the building lots during preliminary plat.

City staff recommend changing the payment of the general facility charge to be due at final plat approval or subdivision of land (e.g. boundary line adjustment).

Final plat approval is the point at which utility improvements are installed and dedicated to the city and services are available to the building lot. At this point in the development process where there is a nexus between the charge and service available to the lot. Plant capacity preliminarily reserved by the water/sewer certificate is now physically available. This is different than transportation and park impact fees where the impact to the infrastructure doesn't occur until building occupancy. In the case of water and sewer, the impact to the infrastructure occurs when service is available to the lot.

At this point, there is a building lot and the finance department can create a utility account when the general facility charge is collected. The general facility charge would be recorded on the utility account for tracking purposes.

Procedure #7

The city council and staff discussed establishing a holding charge for certificates of availability.

The purpose of the holding charge was to collect sufficient revenues from certificate holders to cover the cost of debt service needed to serve new growth. The water and sewer rate studies identified the cost of debt service for new growth at approximately 25% of the base utility rate.

After reviewing the issue with the city attorney and analyzing the pertinent case law, city staff recommend deleting the procedure to establish a holding charge.

Instead, city staff recommend adopting a procedure to have the certificates of availability expire with the preliminary plat. Meaning if the applicant lets the preliminary

plat lapse as defined in SMC 16.28.390 the certificates of availability expire and may be allocated to another applicant.

Establishing a expiration date for certificates of availability at preliminary plat would provide a way for the city to better manage capacity. Under the current system, there is no expiration. Since certificates “run with the land” and not the applicant, there may be preliminary plats with certificates that never proceed to final plat.

FISCAL IMPACT:

The fiscal impact is positive to the city. The city council is seeking to adopt procedures that ensure there will be adequate funding and plant capacity to serve new growth.

City staff will return to the council at the next meeting to discuss the timing to implement the new procedures. In other words, if the council changes its procedures, which applicants would be affected by the change.

ALTERNATIVES:

1. Review the staff recommendation. Ask questions. Provide direction to staff on when the water and sewer general facility charges should be paid; deleting the proposed holding charge; establishing an expiration date for certificates.
2. Do not review the staff recommendation and direct staff to areas of concern.

RECOMMENDED ACTION:

- Establish payment of water and sewer connection fees as part of the final plat approval process
- Delete the proposed requirement for a “holding” charge,
- Set certificate expiration with preliminary plat lapse concurrent with SMC 16.28.390

ATTACHMENT

A – Water Sewer Availability Procedure



CITY OF SULTAN

Water/Sewer Availability Procedure

1. Schedule a Pre-Application Meeting with City Departments.
 - a. Contact the Permit Assistant 360.793.2231 for an application form, costs and submittal requirements.
 - b. Meetings are scheduled on Wednesday mornings. All applications are due 1 week in advance of meeting to provide for internal review, comments and questions.
 - c. Meeting will be held with appropriate City of Sultan Staff and ~~Developer~~Applicant Representatives.

2. The City of Sultan has a limited number of sewer connections available. Except for any existing connections, the City does not intend to provide sewer service for those not meeting Comprehensive Plan goals and policies. The number of connections available is limited and the City will prioritize requests for sewer service for infill and commercial/industrial according to the City's current City Comprehensive Plan at the pre-application meeting.

The ~~developer~~applicant shall provide the following additional information:

- a. Information whether the property is within a ULID or LID, or an area designated for a local facility charge to support a ULID or LID;
- b. Suitability of the Sultan Comprehensive Plan, the environmental and economic impact and the ability of the applicant to develop to City Code and Standards.
- c. In the event of concurrent annexation/development proposals applicant agrees to meet all City development standards and pay all development and impact fees associated with the project. Thereafter, building permits will be issued after the effective date of the annexation.

As a result of the pre-application meeting, the City will conduct an analysis of the remaining capacity of the City's sewer treatment facilities and the foreseeable demand. The proposed development shall be analyzed with respect to its size and density of development, quantity of utility service required (average flow and peak periods), special treatment or hazards involved and the meeting of all development codes. Provision of sewer service to the property would not jeopardize public health or safety, the request shall be deemed a qualifying request.

Available sewer utility connections will be allocated in letters of availability in the following order of priority:

- a. by category of request and
- b. by date of receipt within the category

Utility requests shall be placed in one of three categories in the following order of priority:

- Within the City limits
- A qualifying request for service as infill and/or commercial in close proximity to existing utility lines with adequate reserve capacity

- A qualifying request for service outside the City limits but within the City's Urban Growth Boundary and not in close proximity to existing utility lines with adequate reserve capacity

As a result of the pre-application meeting, the information submitted and the analysis performed, until such time as eighty five per cent capacity of the City's wastewater treatment plant has not been exceeded.

The City of Sultan will allocate during preliminary review an estimated number of water and sewer connections to be designated for the project.

3. Upon written notice of the preliminary connection allocation by the City, the ~~Developer~~Applicant must request in writing from the Public Works Director a letter for water and sewer availability. The request would include:
 - a. The date of the pre-application meeting.
 - b. The number of connections allocated by the City of Sultan.
 - c. The property address.
 - d. The Tax Parcel I.D. Number(s).
 - e. Name of project.
 - f. Anticipated application date.
 - g. Development schedule for property.
 - h. ~~Developer~~Applicant information (name, address, phone number, e-mail etc.)
4. Upon issuance, the Water and Sewer Availability Letters will state:
 - a. The letters are non-transferable.
 - b. The ~~Developer~~Applicant has 45 days from the date of the availability letter(s) to submit to the Planning Department a complete development application, including the payment of all fees and supplemental information for the project requested during the pre-application meeting.
5. The water and sewer availability letters may be renewable if the ~~developer~~applicant is within 2 weeks of submitting a counter complete development application to the City of Sultan and connection allocations remain available.
6. Payment of water and sewer connections will be required when a development/project has received ~~preliminary~~final subdivision, planned unit development or binding site plan approval ~~or final approval when preliminary approval is not required (i.e. condition use permit)~~ by the Hearing Examiner, City Council or administrative approval from permitting department.
7. ~~Upon payment of the water/sewer connections, a monthly fee of 25% of the monthly base fee per lot will be payable monthly towards debt service. Certificates of availability expire if the applicant has failed to complete his or her plat within five (5) years form the date of preliminary plat approval in accordance with SMC 16.28.390.~~