

**SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET**

ITEM NO: A-1

DATE: December 10, 2009

SUBJECT: Emergency Moratorium
Accessory Dwelling Unit Applications
SMC 16.25

CONTACT PERSON: Robert Martin, Community Development Director

ISSUE:
Adoption of Ordinance 1070-09; an Emergency Moratorium on submittal of applications for Accessory Dwelling Units (ADU) under SMC 16.25.

STAFF RECOMMENDATION:
Adopt Ordinance 1070-09, an ordinance prohibiting submittal and acceptance of applications for Accessory Dwelling Units under provisions of SMC 16.25, and declaring an emergency.

BACKGROUND:
In 1993, the Washington Legislature adopted RCW 43.63A.215. This statute was a state-level override of local zoning codes, requiring that local jurisdictions: (Counties exceeding population of 125,000; and cities exceeding 20,000) provide for "Accessory Apartments" in their single-family residential zones.

In 1993, even though the City of Sultan was not specifically covered by the statute (population under 20,000) the City Council adopted Ordinance 823-03 creating SMC Chapter 16.25, "Accessory Dwelling Units" (ADU's).

The Council has been recently made aware of deficiencies in the provisions of SMC 16.25. In specific, these deficiencies relate to standards that define and establish residency on the property for purposes of filing an application.

In general, Council has discussed the expectation that Chapter 16.25 was adopted to provide for temporary health-hardship residences, and not to provide for permanent placement of second dwellings on single-family lots. Recognition that the code provides for two or more dwellings on each single-family parcel that is large enough to have additional dwellings has been discussed by the council. The current code does not provide for health hardship dwellings, but does provide for one or more permanent accessory dwelling units on individual lots.

DISCUSSION:
Based on discussions at recent council meetings (October 22, and November 12, 2009) Council has expressed concern for accessory dwelling units that could be permitted under SMC 16.25 (meaning multiple single-family dwellings on single-family parcels).

At its November 12, 2009 meeting, the Council, in the discussion section of the agenda, made a consensus referral of the Accessory Dwelling Unit issue to the Planning Board, recommending that the Board proceed with actions leading to removal of Chapter 16.25 from the Municipal Code. The Planning Board reviewed a revised Prioritized Work Plan that included addition of the ADU topic at their November 24, 2009 meeting.

The potential exists for ADU applications to be submitted under current code language while the Planning Board is pursuing the direction from Council at its November 12th meeting. On the advice of legal counsel, staff is bringing forth an emergency moratorium for consideration by the City Council. The moratorium prohibits staff from accepting applications for accessory dwelling units. As an emergency moratorium it can be adopted by Council immediately and becomes effective five (5) days after publication. The purpose of the emergency clause (immediate effect) is to address the possibility that applications for inappropriate accessory dwelling units could be submitted and would be vested under current code standards while a normal moratorium ordinance is going through its adoption process.

By state statute this moratorium is subject to a public hearing subsequent to its adoption. Subject to alternative Council direction, staff proposes to schedule a public hearing for the January 14, 2010 Council Meeting. This moratorium will run for six months, or until provisions correcting the code deficiencies are adopted, whichever comes first. If work on the code is not completed within six months, the moratorium can be subject to an additional public hearing and extended for an additional six months.

ALTERNATIVES:

1. Proceed with moratorium, but not under emergency clause, directing staff to come back with a normal ordinance adoption process without emergency provisions.
2. Delay action on moratorium, and review provisions of SMC 16.25, directing staff to return with revisions.

RECOMMENDATION:

Adopt Ordinance 1070-09, an ordinance prohibiting submittal and acceptance of applications for accessory dwelling units under provisions of SMC 16.25, and declaring an emergency.

ATTACHMENTS

Attachment A: Ordinance 1070-09

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 1070-09

AN ORDINANCE OF THE CITY OF SULTAN,
WASHINGTON IMPOSING A MORATORIUM ON THE
ACCEPTANCE OF AND PROCESSING OF
APPLICATIONS FOR ACCESSORY DWELLING
UNITS UNDER SMC 16.25.010 THROUGH 16.25.040.

WHEREAS, RCW 36.70A.390, 35A.63.220, and other lawful authority give the Sultan City Council (“Council”) the authority to enact moratoria; and

WHEREAS, RCW 43.63A.215. does not require cities under 20,000 to permit Accessory Dwelling Units; and

WHEREAS, the City Council has been made aware of deficiencies in the standards and regulations for residential accessory dwelling units relating to requirements and definitions of residential occupancy ; and

WHEREAS, it is the intent of the Council to undertake a full review of SMC Chapter 16.25, to determine appropriate code changes to address the issues of accessory dwelling units in the community; and

WHEREAS, the Council finds that further applications for accessory dwelling units under existing code standards are not in the best interest of property owners in the vicinity of property where such an application may be submitted, and are not to the benefit of the welfare of the community at large; and

WHEREAS, it is necessary, in order to preserve the public health, safety, and welfare of City residents, to prevent further submittal of development applications and approvals in the City until the appropriate planning and legislative action can be completed to address the existing deficiencies in the code; and

WHEREAS, it is the intent of the Council to lift this moratorium at such time as the Council adopts new legislation addressing the issue of accessory dwelling units;

NOW, THEREFORE, it is ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. Moratorium imposed. A moratorium is hereby imposed. From and after the first day after the effective date of this Ordinance, the planning director shall not accept and the City shall not process applications for accessory dwelling units under SMC 16.25.010 through 16.25.040.

Section 2. Duration. A public hearing shall be held not later than six months following the date of adoption by the Council, to consider the moratorium imposed and to determine whether to continue the

moratorium, modify it or rescind it, and at which time, if the moratorium is continued or modified, to adopt findings of fact justifying the Council's decision. Unless continued, modified, or rescinded as a result of the public hearing, this moratorium shall be effective for a period of six months from the effective date of this Ordinance.

Section 3. Severability. If any section, sentence, clause, phrase, or other portion or provision of this Ordinance or its application to any person or project is, for any reason, declared invalid, illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, the balance of this Ordinance shall be unaffected and shall remain in full force and effect.

Section 4. Effective date. The City Council hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve the public welfare and to prevent the potential for vesting of development of accessory dwelling units.

Section 5. Declaration of emergency. The City Council hereby declares for the public interest, safety and welfare reasons set forth above, that an emergency exists necessitating that this ordinance take effect immediately upon its passage.

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

By _____
CAROLYN ESLICK, Mayor

ATTEST:

By _____
LAURA KOENIG, City Clerk

Approved as to form:

By _____
Margaret King, City Attorney

Published: _____, 2009