

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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**ITEM NO:** A-3 A.

**DATE:** July 8, 2010

**SUBJECT:** Repeal of SMC 21.04.054 A.  
Additional criteria for duplexes or two-family dwellings, 300-foot separation required

**CONTACT PERSON:** Robert Martin, Community Development Director

**ISSUE:** Conduct first reading of Ordinance 1081-10, an Ordinance repealing Sultan Municipal Code (SMC) provision 21.04.054 A.; "Additional Criteria for duplexes or two-family dwellings, 300-foot separation required".

**PLANNING BOARD RECOMMENDATION:**

The Planning Board recommends that the Council adopt an ordinance repealing (SMC) provision 21.04.054 A. that requires 300 foot separation between duplex properties and 100 foot separation between duplex units, and that the Council proceed with adoption without conducting an additional public hearing as provided by SMC 16.134.050 J.

**STAFF RECOMMENDATION:**

Staff recommends that the Council accept the Planning Board's recommendation and conduct first reading of Ordinance 1081-10.

**BACKGROUND:**

At its May 18, 2010 meeting the Board reviewed a staff report outlining the issues leading to the recommendation that SMC 21.04.052 be repealed.

At its June 15, 2010 meeting, the Board conducted a public hearing on the proposed amendment as provided by SMC 16.134.050 I.

At its June 15, 2010 meeting, the Board voted unanimously to recommend repeal of SMC 21.04.054 A., and that the City Council need not conduct an additional public hearing prior to adoption of the ordinance.

**DISCUSSION:**

Following is the information that the Planning Board reviewed in its consideration of this proposal. There was no public testimony at the public hearing.

SMC 21.04.054 sets restrictions on development of duplexes (two-family dwellings).

This code section is invoked when duplexes are applied for in the Low/Moderate Density zone (SMC 16.12.010) or the Moderate Density Zone (SMC 16.12.020). Duplexes in these zones are listed in the Conditional Use category and are subject to a public hearing before the Hearing Examiner to verify compliance with the general criteria for approval of conditional uses, to determine compliance with the standards of 21.04.054 A. & B.

Duplexes in the High Density Zone (SMC 16.12.030) are listed in the Outright/Permitted category and are not subject to the standards of SMC 21.04.054 as duplexes in these zones do not go through the Conditional Use process.

It can be argued that duplexes should not be subject to Conditional Use procedures to encourage housing options and affordability, and to achieve density compliance with the Comprehensive Plan. The scope of this staff proposal is more limited because the Comprehensive Plan Policy options implied by removal of duplexes from Conditional Use review altogether have not previously been explored and are just now being addressed as part of the 2011 Comprehensive Plan update process.

#### Conditional Use Criteria 21.04.054 A.

The scope of this proposal is to remove 21.04.054 A. which requires that: only one other duplex or multi-family use may exist within 300-feet of the proposed location for a new duplex; and that at least 100-feet separates each duplex building from every other duplex building (whether on the same ownership or on an adjacent ownership).

#### Conditional Use Criteria 21.04.054 B.

This proposal does not include removal of Conditional Use criteria B which sets standards for design and appearance that is harmonious with the single-family development in the neighborhood. If the Planning Board is interested in streamlining the code further, this criterion could be removed from the Conditional Use section and put in Section 16.24, Standards for Infill Development in Residential Areas. Staff will discuss this further with the Board if there is interest in this option.

#### Why is a Conditional Use Permit Required?

The Conditional Use process requires an applicant to provide findings in support of the general criteria for approval of a Conditional Use. A public hearing is scheduled after a complete application is filed with a fee of \$1,500 plus direct costs of mailing.

To approve the application, the Hearing Examiner must make findings that support the connections between the criteria of 21.04.050 and the facts of the proposal.

In the case of duplexes, compliance with the requirements of 21.04.054 A. & B. are easy to document and make findings as to whether the proposal meets or does not meet the standards. This could be easily accomplished at the staff review level without involvement of the Hearing Examiner. This is called administrative review (Level II processing in current planning systems).

Compliance with the general criteria of 21.04.050 A. through E. is not so easily documented or defended. It is purely a matter of personal perspective whether a duplex is "detrimental to the public welfare or injurious to the property and improvements in the vicinity of the proposed (duplex)..." Looking at the code from the current day, it is reasonable to surmise that duplexes were put into the Conditional Use category for the LMD and MD zones was to give neighbors the opportunity to express their opinion on a duplex in their neighborhood, more than it was to make a material determination regarding the code compliance of the proposal.

The effects of the cost and trouble of a Conditional Use procedure, combined with the restrictions on location called for in 21.04.054, serve, to some indefinable extent, to discourage development of duplex housing in the community.

Questions to be answered by the Board:

At some point, housing types must be regulated, so the operative questions for this discussion are:

1. To what extent does SMC 21.04.054 A. comply with the Comprehensive Plan policies for duplex housing?
2. Is there any other part of 21.04.054, or Low/Moderate Density (LMD) zone (SMC 16.12.010) or the Moderate Density (MD) zone (SMC 16.12.020) that inordinately restricts duplex housing options when compared with the Comprehensive Plan policies on housing?

Comprehensive Plan Analysis for Question #1:

The Comprehensive Plan contains a policy section specifically on-point to the questions posed above. This is reproduced for reference as. Applicable policies from this section of the plan will be presented and discussed in this section of this report.

PLAN POLICIES:

***2 Housing choice***

Expand housing district and code definitions to allow a broad choice of housing types, locations and prices. Provide housing opportunities for every type, age, physical and mental capability of household to include the family, the single-headed household, the individual, and the elderly. To the extent appropriate, recognize social area specialization by household and age group, and provide public services that reflect each area's special needs.

Proposed Finding:

Duplex housing can provide a means for diverse populations to live in a relatively independent fashion while being close to family members or care givers. Owner occupied duplexes can provide an opportunity for breaking into the housing market through mortgage support from the rental unit. These concepts are in support of Policy 2.

***3 Innovative housing product definitions***

Amend the zoning ordinance to define an increased variety of housing products including detached single-family, detached lot line, duplex, townhouse, multiplex, and garden apartments in addition to the single-family and mobile home products now included in the prevailing ordinance.

Proposed Finding:

The limitations of 21.04.054 A. are in conflict with this policy which directs increased opportunity for duplexes and similar housing types that can increase opportunity and affordability.

***7 Develop attached single family housing types including duplex, quadplex, garden, row or townhouses*** – to reduce development costs, increase choice, achieve higher densities, but still maintain a moderate-density scale and appearance.

Proposed Finding:

Policy 7 works together with Policy 3 to call for encouragement of duplex housing. The arbitrary limitations of 21.04.054 A. work to limit the intent and realization of this policy.

Conclusion of Comprehensive Plan Analysis for Question #1:

The policies cited above are selected because they specifically deal with duplex development. It is clear that the Comprehensive Plan Policies call for encouragement of duplex development. The proposed findings indicate that the provisions of 21.04.054 A. which restrict the location of

duplexes do not encourage duplex development, and, in fact, discourage duplex development. That is a conflict between the Plan and the implementing ordinances/development regulations.

Proposed answer to question #1:

The facts, findings, and conclusions presented above indicate that the answer to questions # 1. (above) is that the separation of 100' and 300' called for in 21.04.054 A. does not comply with the applicable Comprehensive Plan Policies, and that it and should be repealed. The Board needs to review these findings to determine if it agrees with that conclusion.

Policy Analysis for Question # 2:

As briefly explained above, section 21.04.054 exists because duplexes are listed in the LMD and MD zones as a conditional use. As a conditional use, the proposal for a duplex in these zones must meet the criteria of 21.04.050 A. through E. as determined by the Hearing Examiner after a public hearing.

Duplexes are purely residential structures which, as we have seen in the policy analysis above, are encouraged by directly applicable policies of the Comprehensive Plan. The general criteria for a conditional use do not change how a duplex is designed or whether it fits in with the design of the surrounding development. These general criteria are so broadly worded that anyone can object to any duplex based on philosophy, not on definable development standards. Similarly, any developer could propose compliance with these criteria based on not violating any definable development standard. Putting a duplex through these very general criteria is merely an invitation to engage in a public debate that cannot be answered to anyone's satisfaction based on defined standards.

The actual standards involved in the review process are presented in 21.04.054 B. These standards are specific and defined. Whether a person agrees in philosophy to duplex housing in their neighborhood or not, they can objectively determine whether the front doors are located so as to present the appearance of a single-family residence. The same holds true for the other specific criteria of this section.

At this point, it then must be asked if the Hearing Examiner is required to conduct a public hearing to determine compliance with the criteria of 21.04.054 B? Staff responds that the answer is no. Once the criteria for a duplex are clearly defined, staff can make the determination of compliance with the criteria. This is a much more streamlined and efficient process that complies with the Comprehensive Plan Policies that clearly encourage duplex development.

This is not to say that duplexes are to be located and/or designed without proper standards. If, for example, the community believes that duplexes should not be allowed in the LMD zone, then duplexes can be removed from that zone altogether, or retained as a Level II use.

(Note: Level II uses do not exist in the Sultan code at this time whereby the surrounding property owners get notice that a duplex is under consideration by staff for their area, what the criteria are, and how the proposed development meets those criteria. Notified property owners are invited to call or write staff with their response to the proposed use and findings. These comments are entered into the record of the review and available to the public in the file. Staff then issues a decision on compliance with the criteria. The decision is appealable to the Hearing Examiner.

Proposed answer to Question #2:

At least in the MD and HD zones, the Comprehensive Plan Policies cited above lead to the determination that duplexes should be permitted uses with staff-administered design criteria as described in 21.04.054 B. This would require adjustment of the descriptions and tables of the

MD and HD zones similar to what was recently done with the minimum lot size in the HOD and ED zones for industrial developments.

The Comprehensive Plan Policy conflict presented by the listing as a conditional use is not as direct as the conflict presented by the distance separation restrictions of 21.04.054 B. The Board could determine that this issue needs to be addressed but that action should be deferred to the overall revision of the Unified Development Code that is in progress at the staff level. That code revision will develop the Level II review process described above and the Board can consider whether to put duplexes into a Level II category.

**PLANNING BOARD RECOMMENDATION:**

The Planning Board recommends that the Council adopt an ordinance repealing (SMC) provision 21.04.054 A. that requires 300 foot separation between duplex properties and 100 foot separation between duplex units, and that the Council proceed with adoption without conducting an additional public hearing as provided by SMC 16.134.050 J.

**STAFF RECOMMENDATION:**

Staff recommends that the Council accept the Planning Board's recommendation and conduct first reading of Ordinance 1081-10.

**ATTACHMENTS:**

Attachment A: Ordinance1081-10

Attachment B: SMC 21.04.054

**CITY OF SULTAN  
WASHINGTON  
ORDINANCE NO. 1081-10**

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**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, ADOPTING  
AMENDMENTS TO SULTAN MUNICIPAL CODE (SMC) TITLE 21, OTHER LAND  
USES, REPEALING SECTION 21.04.054 A; ADDITIONAL CRITERIA FOR  
DUPLEXES OR TWO-FAMILY DWELLINGS; PROVIDING FOR SEVERABILITY;  
AND ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, the City of Sultan has adopted Sultan Municipal Code Title 21, Other Land Uses, and periodically adopts amendments to said Title in response to changing conditions; and

WHEREAS, Title 21 contains provisions that prescribe procedures and standards for issuance of conditional uses as contained in SMC Title 16; and

WHEREAS, Section 21.04.054 A. prescribes standards for review and approval or denial of an application for a duplex or multi-family dwelling as a conditional use, specifically related to required distances between duplexes and multi-family dwellings that do not apply to single family dwellings; and

WHEREAS, the Sultan 2004 Comprehensive Plan as amended in 2008 contains policies encouraging diversity and affordability in housing; and

WHEREAS, the Planning Board, at its regular meeting of June 15, 2010, conducted a duly advertized public hearing on the proposal to repeal Section 21.04.054-A; and

WHEREAS, the Planning Board received no testimony in opposition to the proposal; and

WHEREAS, the Planning Board, at its regular meeting of June 15, 2010 adopted findings that the separations between dwellings required by Section 21.04.054 A. do not encourage diversity and affordability in housing as called for in the Comprehensive Plan; and

WHEREAS, the Planning Board, at its regular meeting of June 15, 2010, unanimously adopted a motion to forward the proposal to repeal Section 21.04.054 A. , and a recommendation, as provided in SMC 16.134.050 J, that the City Council, need not hold an additional public hearing on the proposed amendment; and

WHEREAS, the City provided notice to the Washington Department of Community, Trade, and Economic Development for review under provisions of RCW 36.70A.106 (3)(b), and other notices as required by law; and

WHEREAS, the City Council has received and accepted the recommendation of the Planning Board, and finds that the proposed repeal of Section 21.04.054 A. is an appropriate measure to keep the SMC consistent with the Sultan Comprehensive Plan by encouraging diversity and affordability in housing in the community;

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:

21.04.054 Additional criteria for duplexes or two-family dwellings.

The following additional criteria apply to allow duplexes or two-family dwellings:

~~A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.~~

~~B.~~ The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan.

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 \_\_\_\_\_, 2010.

CITY OF SULTAN

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Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

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Laura Koenig, City Clerk

Approved as to form:

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Margaret J. King, City Attorney

Passed by the City Council:

Date of Publication:

Effective Date:

Sultan Municipal Code Excerpt  
Section 21.04.054

21.04.054 Additional criteria for duplexes or two-family dwellings.

The following additional criteria apply to allow duplexes or two-family dwellings:

A. Only one other duplex or multifamily use may exist within 300 feet of the proposed use and there must be at least a 100-foot separation (building to building) between the uses.

B. The proposed dwelling has been designed to be harmonious with the neighborhood and is constructed to provide the appearance of a single-family unit by, for example, altering the location of the front doors and windows; garages and access to garages; parking; landscaping and fencing; utilities and mailbox locations; building heights consistent with surrounding properties; exterior colors and materials; and differing setbacks, all of which are confirmed by a site plan.