

## SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

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**ITEM NO:** A-3  
Ordinance 955-07 Amending Sultan Municipal Code Title 16  
Chapter 16.18 Nonconformances First Reading

**DATE:** September 13, 2007

**SUBJECT:**

Consideration of proposed revisions, as recommended by the Planning Board, to the Sultan Unified Development Code Title 16 Chapter 16.18 Nonconformances Section 16.18.060, Extension or Enlargement of Nonconforming Situations.

**CONTACT PERSON:**

Rick Cisar, Director of Community Development 

**ISSUE:**

The issue before the City Council is the approval of Ordinance Number 955-07 (Exhibit A) revising the Sultan Unified Development Code Chapter 16.18 Nonconformances as Recommended by the Planning Board and passing it on to Second Reading.

**PLANNING BOARD RECOMMENDATION AND SUMMARY:**

The Sultan Planning Board conducted a Public Hearing on May 1, 2007 to consider the code change and thereafter held additional discussions at the May 15, 2007, June 5, 2007, and June 26, 2007 meetings to consider additional amendments to the Ordinance in preparing its Final Recommendation to the City Council. The minutes of the Planning Board meetings on May 1, May 15, June 5, and June 26th for this Code Amendment are included as attachments.

The Planning Board's Recommendation as proposed in Ordinance 955-07 would change Sections 16.18.060 Extension or Enlargements of Nonconforming situations and Section 16.18.070 Repair, Maintenance, and Construction to allow expansion of nonconforming uses.

**STAFF RECOMMENDATION:**

Approval of Ordinance Number 955-07 on First Reading and passing it on to Second Reading.

**BACKGROUND:**

The City Council on August 23, 2007 conducted a Public Hearing on proposed revisions to the Sultan Unified Development Code Chapter 16.18 Nonconformances as Recommended by the Planning Board. After closing the Public Hearing and considering the testimony and information presented at the the Public Hearing, Council directed City Staff to schedule the First Reading of Ordinance Number 955-07 revising Chapter 16.18 as recommended by the Planning Board for the next City Council Meeting.

A summary of the Meetings and Hearings conducted in regards to this code revision were:

- Planning Board Meeting's May 1, May 15, June 5, and June 26, 2007
- Public Hearing Planning Board May 1, 2007
- Public Hearing City Council August 23, 2007

**SUMMARY:**

The proposed change would affect for example, two auto-oriented businesses in the downtown Urban Center (UC Zone) and all other nonconforming situations throughout the community generally constructed prior to the adoption of the Unified Development Code in 1995. The nature and extent of these nonconforming situations primarily involve existing single-family residential uses in the Urban Center, Highway-Oriented Development, and Economic Development Zoning Districts. Other nonconforming situations involve building setbacks and parking . Nonconforming businesses in the above Zoning Districts would be allowed to expand by 50% of the size of the of the total amount of space devoted to the nonconforming use at the time it first became nonconforming. For example, a 2,000 sq. ft. building could expand an additional 1,000 sq. ft. if all other code provisions, such as parking and setbacks are met.

The proposed change would also allow damaged nonconforming uses to be rebuilt to their same size and square footage. The overall impact is to assist business owners who want to remain in their current nonconforming location. The off setting benefit to the community is property improvement, business retention, and job creation.

**DISCUSSION:****CURRENT CODE REQUIREMENTS:**

Under the SMC 16.18.060, Non-conforming single family detached residences may be enlarged or replaced with a similar structure of a larger size providing the enlargement does not increase the extent of the existing nonconformities with respect to setbacks and parking. All other non-conforming uses (e.g. commercial, industrial, etc.) may not be enlarged or replaced with a similar structure of a larger size.

**PROPOSED REVISIONS TO CURRENT CODE REQUIREMENTS:**

The proposed code amendment to Section 16.18.060 would treat single-family nonconforming uses and other non-conforming uses equally under the code by (1) allowing other nonconforming uses to enlarge the structure with a limitation on the increase of the size of structure by not more than 50% of the size of the existing building and (2) require all other code provisions such as setbacks and parking be met.

The proposed change to Section 16.18.070 Repair, Maintenance, and Construction affect only commercial uses. This change would allow a damaged nonconforming structure to be repaired or replaced to the existing square footage and size of the existing structure prior to the damage.

**COMPREHENSIVE PLAN GOALS:**

The Comprehensive Plan does not specifically address the issue of Nonconforming Uses, Section 3 Implementation Task 62:, page 67 recommends the following implementing measure: Designate downtown Sultan-for mixed-use office, commercial, and residential uses to maximize local services and the historical pedestrian-oriented village center.

**SUPPORT FOR CHANGE:**

The Hearing Records for the proposed Amendments before the Planning Board and City Council contain both written and oral testimony from the bussiness community in support of this change.

**ALTERNATIVES:**

City Council in consideration of Ordinance Number 955-07 and the proposed Amendment providing for the expansion of nonconforming uses may:

1. Approve the Ordinance as recommended by the Planning Board; or
2. Modify the Ordinance as recommended by the Planning Board; or
3. Refer the Ordinance back to the Planning Board to address any concerns of the City Council; or
4. Reject the Ordinance and Amendments to Nonconforming Uses as recommended by the Planning Board.

**RECOMMENDED MOTION:**

Move to approve Ordinance Number 955-07 on First Reading and pass it on to the Consent Agenda for Second Reading.

**ATTACHMENTS:**

Exhibit A Ordinance 955-07 providing for expansion of Nonconforming Uses as Recommended by the Planning Board

**COUNCIL ACTION:**

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**CITY OF SULTAN**  
**ORDINANCE NO.955 -07**

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**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON**  
**ADDRESSING NONCONFORMANCES BY AMENDING CHAPTER 16.18**  
**NONCONFORMANCES SECTION 16.80.060\_ EXTENSION OR**  
**ENLARGEMENT OF NON-CONFORMING SITUATIONS SUBSECTION (A)**  
**(1.), (B.) AND (C.) BY PROVIDING FOR THE EXTENSION OR**  
**ENLARGEMENT OF A NONCONFORMING SITUATIONS BY NOT MORE**  
**THAN 50% OF THE TOTAL SPACE DEVOTED TO A NON-**  
**CONFORMING USE AND ESTABLISHING EVALUATION CRITERIA FOR**  
**EXTENSIONS OR ENLARGEMENTS AND SECTION 16.18.070**  
**NONCONFORMANCES—REPAIR, MAINTENANCE AND**  
**CONSTRUCTION, SUBSECTION (B.) BY INCREASING THE DAMAGE**  
**OR REPAIR OR REPLACEMENT COST TO A STRUCTURE FROM 25%**  
**TO 75100% OF THE APPRAISED VALUATION OF THE DAMAGED**  
**NONCONFORMING STRUCTURE AND BY REPEALING SMC 21.04.020**  
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**WHEREAS**, the City of Sultan has received a request to amend SMC Chapter 16.18 Nonconformances to provide for the enlargement of a commercial use in the Urban Center (UC) zoning district; and

**WHEREAS**, SMC Chapter 16.18.060 E provides for the enlargement of Single-Family uses within all zoning districts ~~WITHIN THE~~ City of Sultan, and

**WHEREAS**, SMC 21.04.020 currently subjects expanding nonconforming uses to the conditional use permits requirements of Chapter 21.04 SMC;

**WHEREAS**, the proposed amendment would allow the City to regulate the enlargement of nonconforming ~~commercial~~ uses in all zones under the same similar provisions and requirements to those established for nonconforming single-family uses within the City and consolidate provisions to deal with expanding ~~commercial~~ nonconforming uses.

**NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF SULTAN AS FOLLOWS:**

**Section 1.** SMC Chapter 16.18 NONCONFORMANCES, Section 16.18.060, Extension or Enlargement of Non-Conforming Situations, is Subsection (A.) (1.), (B.) and (C.) is hereby amended to read as follows:

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3 **16.18.060 Extension or enlargement of nonconforming situations.**

4 A. Except as specifically provided in this section, no person may engage in any activity  
5 that causes an increase in the extent of nonconformity of a nonconforming situation. In  
6 particular, physical alteration of structures or the placement of new structures on open  
7 land is unlawful if such activity results in:

8 1. More than ~~a~~ ~~an~~ 50% increase in the total amount of space devoted to a  
9 nonconforming use; or

10 2. Greater nonconformity with respect to dimensional restrictions such as setback  
11 requirements, height limitations, density requirements, or other regulations such as  
12 parking requirements.

13 B. Subject to subsection (D) and (E) of this section, a nonconforming use may be  
14 extended throughout any portion of a completed building that, when the use was made  
15 nonconforming by this unified development code, was manifestly designed or arranged to  
16 accommodate such use. However, a nonconforming use may not be extended to  
17 additional buildings or to land outside the original building if the result would be more than  
18 a 50% increase in the size of the total amount of space devoted to the nonconforming use  
19 at the time it first became non-conforming.

20 C. Subject to subsection (D) of this section, a nonconforming use of open land may not  
21 be extended to cover more land than 150% of the land that was occupied by that use  
22 when it became nonconforming.

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24 D. The Director of Community Development ~~City~~ in considering an application for any  
25 extension or expansion of a nonconforming use under subsections B or C shall process  
26 the application as provided for in Exhibit A and consider the following additional criteria  
27 when evaluating the application to determine if an application can meet the criteria and be  
28 approved and mitigate potential impacts on surrounding properties. :

29 1. The impact of traffic generated by the proposed use on the surrounding area,  
30 pedestrian circulation and public safety, and the proposal's ability to mitigate potential  
31 impacts.

32 2. The site has sufficient area to provide for off-street parking, landscaping and screening  
33 from adjacent uses.

34 3. The adequacy of streets, sidewalks, utilities, and public services to accommodate the  
35 proposed use.

36 4. The landscaping, buffering and screening of parking, loading, and storage areas  
37 mitigates the impacts on surrounding properties.

38 5. The generation of nuisance irritants such as noise, smoke, odor, glare visual blight or  
39 other undesirable environmental impacts.

40 6. Consistent with the Design Guidelines and standards, and community vision as  
41 expressed in the City's Comprehensive Plan

1 Application of these criteria shall be an administrative determination of the Director of  
2 Community Development subject to a right of appeal to the Hearing Examiner.

3 E.D. The volume, intensity, or frequency of use of property where a nonconforming  
4 situation exists may be increased, and the equipment or processes used at a location  
5 where a nonconforming situation exists may be changed, if these or similar changes  
6 amount only to changes in the degree of activity rather than changes in kind and no  
7 violations of other requirements of this section occur.

8 FE. Notwithstanding subsection (A) of this section, any structure used for single-family  
9 detached residential purposes and maintained as a nonconforming use may be enlarged  
10 or replaced with a similar structure of a larger size, so long as the enlargement or  
11 replacement does not create new nonconformities or increase the extent of existing  
12 nonconformities with respect to such matters as setback and parking requirements.

13 GF. Notwithstanding subsection (A) of this section, whenever: (1) there exists a lot with  
14 one or more structures on it; and (2) a change in use that does not involve any  
15 enlargement of a structure is proposed for such lot; and (3) the off-street parking or  
16 loading requirements of this code that would be applicable as a result of the proposed  
17 change cannot be satisfied on such lot because there is not sufficient area available on  
18 the lot that can practicably be used for off-street parking or loading, then the proposed use  
19 shall not be regarded as resulting in an impermissible extension or enlargement of a  
20 nonconforming situation. However, the applicant shall be required to comply with all  
21 applicable off-street parking and loading requirements that can be satisfied without  
22 acquiring additional land, and shall also be required to obtain satellite off-street parking if:  
23 (1) parking requirements cannot be satisfied on the lot with respect to which the permit is  
24 required; and (2) such off-street satellite parking is available within 500 feet of the site said  
25 satellite parking area is intended to serve, measured from property line to property line. If  
26 such off-street satellite parking is not reasonably available at the time the permit is  
27 granted, then the permit recipient shall be required to obtain it if and when it does become  
28 reasonably available. This requirement shall be a continuing condition of the permit. (~~Ord.~~  
29 ~~715-00; Ord. 630 § 2 [16.06.160(F)], 1995)~~  
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32 **Section 2.** SMC CHAPTER 16.18 NONCONFORMANCES, Section 16.18.070,  
33 Nonconformances--Repair, maintenance and construction, subsection (B.) is hereby  
34 amended to read as follows:  
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36 B. If a structure located on a lot where a nonconforming situation exists is damaged to  
37 ~~an extent that the costs of repair or replacement would exceed 25-75 percent of the~~  
38 ~~appraised valuation of the damaged structure, then the damaged structure may be~~  
39 repaired or replaced only in accordance with a permit issued pursuant to this unified  
40 development code. However, the repaired or replaced structure shall not exceed the  
41 square footage or size of the existing structure prior being damaged. This section does not  
42 apply to structures used for single-family detached residential purposes, which structures  
43 may be reconstructed pursuant to a permit just as they may be enlarged or replaced.  
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46 **Section 3.** SMC 21.04.020 B is hereby repealed.  
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**Section 3-3 Repealer:** Any and all other ordinance or parts of ordinances of the City of Sultan inconsistent with the provisions or this ordinance are hereby repealed to the extent of such inconsistency.

**Section 43- Severability:** If any provisions of this ordinance or its application to any person or circumstance are held invalid, the remainder of the ordinance or applications of the provisions of the ordinance to other person or circumstances is not affected.

**Section 55-- Effective Date:** This ordinance shall be in full force and effect five days after publication as required by law.

Passed by the City Council and approved by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

City of Sultan

By: \_\_\_\_\_  
Benjamin Tolson, Mayor

Attest:

By: \_\_\_\_\_  
Laura Koenig, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Thom H. Graafstra, City Attorney

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**CITY OF SULTAN**  
**ORDINANCE NO. 955 -07**

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON ADDRESSING NONCONFORMANCES BY AMENDING CHAPTER 16.18 NONCONFORMANCES SECTION 16.80.060 EXTENSION OR ENLARGEMENT OF NON-CONFORMING SITUATIONS BY PROVIDING FOR THE EXTENSION OR ENLARGEMENT OF A NONCONFORMING SITUATIONS BY NOT MORE THAN 50% OF THE TOTAL SPACE DEVOTED TO A NON-CONFORMING USE AND ESTABLISHING EVALUATION CRITERIA FOR EXTENSIONS OR ENLARGEMENTS AND SECTION 16.18.070 NONCONFORMANCES—REPAIR, MAINTENANCE AND CONSTRUCTION, SUBSECTION B BY ALLOWING A DAMAGED NONCONFORMING STRUCTURE TO BE REPLACED TO ITS EXISTING SIZE AND SQUARE FOOTAGE AND BY REPEALING SMC 21.04.020 B..**

**WHEREAS**, the City of Sultan has received a request to amend SMC Chapter 16.18 Nonconformances to provide for the enlargement of a commercial use in the Urban Center (UC) zoning district; and

**WHEREAS**, SMC Chapter 16.18.060 E provides for the enlargement of Single-Family uses within all zoning districts of Sultan, and

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25 2. The site has sufficient area to provide for off-street parking, landscaping and screening  
26 from adjacent uses.

27 3. The adequacy of streets, sidewalks, utilities, and public services to accommodate the  
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29 4. The landscaping, buffering and screening of parking, loading, and storage areas  
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31 5. The generation of nuisance irritants such as noise, smoke, odor, glare visual blight or  
32 other undesirable environmental impacts.

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3 F. Notwithstanding subsection (A) of this section, any structure used for single-family  
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5 or replaced with a similar structure of a larger size, so long as the enlargement or  
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33 This section does not apply to structures used for single-family detached residential  
34 purposes, which structures may be reconstructed pursuant to a permit just as they may be  
35 enlarged or replaced.  
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37 **Section 3.** SMC 21.04.020 B is hereby repealed.  
38

39 **Section 3 Repealer:** Any and all other ordinance or parts of ordinances of the City of  
40 Sultan inconsistent with the provisions of this ordinance are hereby repealed to the extent  
41 of such inconsistency.  
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43 **Section 4 Severability:** If any provisions of this ordinance or its application to any person  
44 or circumstance are held invalid, the remainder of the ordinance or applications of the  
45 provisions of the ordinance to other person or circumstances is not affected.  
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1 **Section 5.** Effective Date: This ordinance shall be in full force and effect five days  
2 after publication as required by law.

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4 Passed by the City Council and approved by the Mayor this \_\_\_\_\_ day of  
5 \_\_\_\_\_, 2007.

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7 City of Sultan

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10 By: \_\_\_\_\_  
11 Benjamin Tolson, Mayor

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13 Attest:

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15 By: \_\_\_\_\_  
16 Laura Koenig, City Clerk

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19 Approved as to form:

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21 By: \_\_\_\_\_  
22 Thom H. Graafstra, City Attorney  
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