

**SULTAN PLANNING BOARD**  
**AGENDA ITEM COVER SHEET**

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**ITEM NO:** Public Hearing Amending Non-conformances

**DATE:** May 1, 2007

**SUBJECT:**

Consideration of proposed revisions to the Sultan Unified Development Code Title 16 Chapter 16.18 Nonconformances Section 16.18.060. Extension or Enlargement of Non-Conforming Situations, and Section 16.18.070 Nonconformance—Repair, Maintenance, and Construction.

**CONTACT PERSON:**

Rick Cisar, Director of Community Development

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**ISSUE:**

The issue before the Planning Board is to hold a Public Hearing on proposed revisions to the Sultan Unified Development Code.

The issues to consider in amending the City's current code provisions is to provide for the expansion of nonconforming situation are:

1. Will the expansion be consistent with the Goals of the Comprehensive Plan and Vision for the Urban Center Zone?
2. Will the expansion promote business retention and provide employment opportunities?
3. Should other nonconforming situations such as commercial and business uses be treated the same as single family detached residential units?
4. Can specific evaluation criteria be established to ensure any impacts identified with an expansion can be successfully mitigated?
5. Should review and approval of expansions be Administrative, by the Hearing Examiner, or the City Council?
6. Should the replacement % value required to bring a nonconforming use into compliance with applicable codes be increased from 25% to 50% or 75 % as requested by Mr. Brandstetter?

**STAFF RECOMMENDATION:**

Conduct the Public Hearing on the proposed amendment to Chapter 16.18 Nonconformance, Section 16.18.060, Extension or enlargement of Nonconforming Situations and Section 16.18.070 Nonconformance –Repair, Maintenance and Construction and thereafter:

1. Closed the Public Hearing and in consideration of the Public comments and written information received at the Public Hearing, discuss the request and prepare a recommendation to the City Council.

2. Closed the Public Hearing and in consideration of the Public comments and written information received at the Public Hearing, defer discussion, action, and a recommendation to the City Council to the next regular Planning Board Meeting.
3. Close the Public Hearing, discuss the request, direct Staff to areas of concern, defer action and a recommendation to a later date.

**BACKGROUND:**

In September of 2006, Mr. Warren Jerden of Sky Valley Automotive (609 Main Street) discussed with the Planning Board a proposed plan to expand his existing automotive repair business.

Staff explained at that meeting that an amendment to the Non-Conforming Use provisions of our current code would be necessary for the proposed expansion. Currently only single family uses are allowed to expand. Commercial, industrial, and multi-family non-conforming situations are not allowed to expand.

Mr. Jerden's Attorney, Mr. Gary W. Brandstetter submitted a letter dated January 31, 2007 (Exhibit A) proposing revisions to the City's Non-conforming Use Regulations that would allow for the expansion of the Sky Valley Auto, as well as other non-conforming situations within the City. In response to Mr. Jerden's request, City Staff, in conjunction with the City Attorney, has (1) prepared a Draft Ordinance to provide for the code amendment as suggested by Mr. Brandstetter (Exhibit D), (2) completed the environmental review of the proposed revisions, (Exhibit F) and (3) coordinated the review of the code change with the State Department of Community Trade and Economic Development.

**CURRENT CODE REQUIREMENTS:**

Under the SMC 16.18.060 (Exhibit B), 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.

**REQUESTED REVISIONS TO CURRENT CODE REQUIREMENT:**

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. Nonconforming single family residential uses are exempt from the requirements. This change would increased the damage or repair or replacement cost of a nonconforming commercial structure from 25% to 75% of the appraised valuation of the building. This revision would allow a commercial

nonconforming building and use to be repaired or rebuilt providing the cost of the repair or new construction does not exceed 75% of the appraised valuation of the structure. If the repair of new construction exceeds the 75% threshold, the building and use must comply and be brought into conformance with the requirements of the Sultan Municipal Code.

The proposed change would affect for example, two auto-oriented businesses in the downtown Urban Center (UC) Zone and all other non-conforming 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 non-conforming situations involve building setbacks and parking (Exhibit E). Non-conforming businesses in the above zoning districts would be allowed to expand by 50%. 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 non-conforming uses to be rebuilt if the repair costs do not exceed 75% of the appraised value. Increasing the value of the repair or replacement cost from 25% to 75% raises the threshold at which a non-conforming use would be allowed to remain in business at its current location. The overall impact of the change would assist business owners who want to remain in their current non-conforming location. The off setting benefit to the community is property improvement and business retention.

**Code Comparasion Analysis:**

Staff has researched the Municipal Research and Service Center of Washington (MRSC) Website in order to provide the Planning Board wth a comparative analysis of the nonconforming use provisions of other Cities. The codes reviewed included the communities of Monroe, Snohomish, Duvall, Everett, Arlington, Lake Stevens, Marysville, Burlington, and Mount Vernon. The code analysis considered the expansion provisions and the percentage of repalcement value.

<b>City</b>	<b>Expansion Allowed</b>	<b>% of Value Used for Rplcmnt</b>
<b>Monroe</b>	<b>No</b>	<b>50%</b>
<b>Snohomish</b>	<b>Yes</b>	<b>75%</b>
<b>Duvall</b>	<b>No</b>	<b>50%</b>
<b>Everett</b>	<b>Yes by 50% if Evaluation Criteria are met.</b>	<b>100%</b>
<b>Arlington</b>	<b>No</b>	<b>50%</b>
<b>Lake Stevens</b>	<b>No</b>	<b>50%</b>
<b>Marysville</b>	<b>Yes but not more 150% of existing area by CUP</b>	

<b>City</b>	<b>Expansion Allowed</b>	<b>% of Value Used for Rplcmnt</b>
<b>Burlington</b>	<b>No</b>	<b>50%</b>
<b>Mount Vernon</b>	<b>Yes, by special permission of City Council and Recommendation by Planning Commission</b>	<b>100%</b>

The code provisions of the cities surveyed vary in their application of the requirements and standards for Nonconforming Uses. The communities of Snohomish, Everett, Marysville, and Mount Vernon provide for expansions of Nonconforming Uses provided the expansion meets the setbacks, height, lot coverage, and open space requirements as well as specific criteria established for nonconforming uses.

**City of Everett Criteria for Expansion of nonconforming use or building. (Administrative Decision on expansions less than 25%, Hearing Examiner decision on expansion over 25%).**

A. Where this chapter provides for the change of a nonconforming use or the expansion of a nonconforming use or building, the following evaluation criteria shall be considered in the evaluation of such proposal:

1. The impact of traffic generated by the proposed use on the surrounding area, pedestrian circulation and public safety, and the proposal's ability to mitigate potential impacts.
2. The site has sufficient area to provide for off-street parking, landscaping and screening from adjacent uses.
3. Provides a service to the general area.
4. The adequacy of streets, utilities, and public services to accommodate the proposed use.
5. Compatibility of the proposed use or building to surrounding properties, especially as it relates to size, height, location and setback of buildings.
6. The number, size, and location of signs and lighting, especially as they relate to more sensitive land uses.
7. The landscaping, buffering and screening of parking, loading, and storage areas.
8. The generation of nuisance irritants such as noise, smoke, odor, glare visual blight or other undesirable environmental impacts.
9. Consistency with the goals and policies of the Everett general plan and the purpose of the zone in which it is located.
10. Consistency with the environmental policies as stipulated in the city's SEPA ordinance.
11. Compliance with other provisions of this title, other city, state and federal regulations.

**City of Marysville Criteria for expansion of a Nonconforming Use as a Conditional uses. (Administrative Approval by Staff appealed to Hearing Examiner)**

The department shall have authority to grant conditional use permits referred to in this chapter. The procedures used by the department shall comply with Chapter 19.52 MMC. The department shall apply the following criteria:

- (1) A nonconforming use or structure should not result in a lack of compatibility with existing and potential uses in the immediate area.

- (2) Adverse impacts of a nonconforming use or structure must be mitigated by site design elements such as landscaping, provision for parking, elimination of outside storage, and general visual improvement of the property.
- (3) Adequate provisions must be made for public improvements such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, both on-site and off-site.
- (4) Concerns of adjacent property owners and the general public must be properly considered.

**City of Mount Vernon - Approval or denial of application – Standards for expansion of Nonconforming Use (Planning Commission Recommendation to City Council.)**

The City Council may approve a permit to enlarge, expand, or reconstruct a nonconforming building or use only after considering the following:

- A. The effect of such enlargement, expansion, or reconstruction on the appearance and use of the area, which might be affected;
- B. The effect of the granting of such permit on traffic patterns in the area;
- C. The adequacy of parking facilities afforded or to be afforded;
- D. The effect on adjacent and nearby property or the economic effect of the proposed expansion, alteration or reconstruction on both the applicant and the owners of property in the vicinity.

**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.

**Urban Center Zone Requirements: 16.12.040 Urban Center (UC) Zone.**

A. General Description of Character and Intent of the Zone. This zoning district encompasses downtown Sultan and is proposed to include high density residential, commercial, office, and other central business district functions to provide a full range of pedestrian-oriented activities and urban services. This zone does not include highway-oriented activities that would be counter-productive in terms of trying to establish a pedestrian-oriented, close-knit urban center.

The Urban Center zone however does provide for the following Conditional Uses which are Automobile related uses:

D. Conditional Uses.

1. Personal Service Establishments;
  - a. Drive-in banks;
2. Seasonal parking facility;
3. Restricted Limited Manufacturing Uses. Restricted limited manufacturing uses involving the processing or fabrication of commodities or products subject to all of the following restrictions, development and performance standards:
  - a. All manufacturing activities including storage and warehousing shall be confined to enclosed buildings on the property.

- b. The use does not inflict upon the surrounding permitted land uses in the district smoke/odors, glare/heat, noise, vibration, or liquid and solid wastes, and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.
- c. The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area and the following uses, which were adopted by the City Council in September of 2004.

4. Restricted Automobile Related Trade Facilities. Restricted Automobile Related Trade Facilities uses involving Retail Auto Parts Sales, Automobile Service Stations, Car Washes, Lube and Oil Service Facilities, and Minor Repair and Servicing conducted inside a building subject to all of the following restrictions, development, and performance standards:

- a. Properties shall have frontage and direct vehicular access to State Highway No. 2. Access to Main Street maybe permitted if the applicant mitigates potential vehicular and pedestrian conflicts.
- b. The use does not inflict upon the surrounding permitted land uses in the district smoke/odors (1), glare/heat (2), noise (3), vibration (4), or liquid and solid wastes (5), and water pollution detrimental to the health, welfare, or safety of the public occupying or visiting such areas.
- c. The design of buildings and related improvements shall employ design standards to support and maintain the commercial character and intent of the area (Exhibit C).

#### **ALTERNATIVES:**

The jurisdictions that provide for the expansion of Nonconforming uses have established criteria to evaluate the request on the surrounding area, including by way of example, traffic impacts, pedestrian circulation, utilities, parking, noise, outdoor storage, signs, and any required public improvements. One criteria used by the City of Everett asks if the expansion "Provides a Public Service." Impacts identified through this process must be mitigated by site design elements.

The evaluation criteria provides a valuable tool and safeguards to ensure that non-conforming use expansions are required to mitigate any impacts identified through the review process. Those applications or expansions that can not successfully mitigate their impacts will fail to meet the approval requirements.

The review and approval process of the jurisdictions also varied with (1) Administrative Approvals by Staff which are appealable to the Hearing Examiner, (2) Hearing Examiner review, and final decision, or (3) Planning Board review and recommendation to the City Council for final approval.

In consideration of review and approval processes, the Sultan City Council is currently considering amendments to their present quasi-judicial role. Subsequently, if a review process is established for nonconformances, that process can be incorporated into and coordinated with our current code revisions.

**RECOMMENDATION:**

Conduct the Public Hearing on the proposed amendment to Chapter 16.18 Nonconformance, Section 16.18.060, Extension or enlargement of Nonconforming Situations and Section 16.18.070 Nonconformance –Repair, Maintenance and Construction and thereafter:

1. Closed the Public Hearing and inconsideration of the Public comments and written information received at the Public Hearing, discuss the request and prepare a recommendation to the City Council.
2. Close the Public Hearing and inconsideration of the Public comments and written information received at the Public Hearing defer discussion and action and a recommendation to the City Council to the next regular Planning Board Meeting.

**ATTACHMENTS:**

- Exhibit A January 31, 2007 letter from Mr. Gary W. Brandstetter
- Exhibit B Chapter 16.18 Non-conformance
- Exhibit C Ordinance 852.04 allowing Automotive Repair in the Urban Center (UC) Zone
- Exhibit D Draft Ordinance providing for expansion of Non-conforming uses
- Exhibit E Memo from Craig Bruner, Building Official, regarding non-conforming situations in Sultan, dated January 31, 2007
- Exhibit F DNS dated March 9, 2007 UDC Code Revision DNS07-02



January 31, 2007

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as residences. But gradually over the years more and more of these homes have been purchased and converted to office use. Oftentimes the owner of a former residence which has been converted to a business use secures options to purchase and/or rights of first refusal on adjoining residential properties so that, when they come up for sale, they can also be purchased. After several residential properties are acquired over time, the residences are all torn down and a new commercial building erected. This transition process takes time, but legal non-conforming uses are a vital component of the transition process.

For these and other reasons, many municipalities have non-conforming use and structure provisions which regulate, but do not prohibit, restoration and expansion of legal non-conforming uses. In contrast, the current Sultan Municipal Code is quite restrictive and could be economically counter-productive. Accordingly, I would like to suggest that the City of Sultan consider an amendment to its non-conforming use and structure regulations.

My suggestions would not require a "rezone" or any change in either the classification or uses permitted in any of Sultan's zones. All my proposed provision would do is allow existing legal non-conforming uses to not only continue, but also to be restored and/or expanded under certain circumstances. Since legal non-conforming uses are constitutionally "vested," that is, they cannot be declared illegal and stopped because that would constitute a "taking" of property without just compensation, it only makes sense to have such continued uses be as vital and contributory to a community's economic well being as possible. In some cases, that may require allowing a legal non-conforming use to expand lest it die, be abandoned and, perhaps, become a blight on the community landscape before someone is available to purchase it, possibly acquire additional property and then redevelop with a permitted use.

At this point, I would like to point out that Warren Jerden and Sky Valley Auto are in a situation which suggests that the regulated expansion of their non-conforming use and structure would be well advised. In particular, the Sky Valley Auto garage and parking area are on 3 of 6 lots previously owned by Bernard and Verleen Swanson. Commercial vehicular car repair was run by the Swanson family for 26 years, from 1968 to 1994. The use was entirely legal under then existing (and/or non-existing) zoning. In 1994, Warren Jerden bought the Swansons' 6 lots and has continued operation of the car repair garage. In addition to the 3 lots used for the garage and its parking lot, both the Swanson family and the Jerdens have owned 3 adjoining lots which have never been developed or used for any purpose which is permitted under the current zoning. Nevertheless, a curb cut was included for these vacant lots when the City put the curb in 13 years ago.

The current zoning of the property was adopted in 1995. That zoning made the use for which Warren Jerden's property was developed and for which it has now been beneficially used for 38 years a legal non-conforming use. Warren's 29 year old adult son, Shawn, now works for and

with his father and is himself a four year resident of Startup. In order for the business to support two households, it is necessary to expand it.

Warren has had plans designed to add approximately half again as many square feet to the existing business in order to accommodate the additional business which he and his son together have generated by being proficient at what they do. If expansion of their non-conforming use is not permitted, they may need to move to another site. While it is possible that another site could be located in Sultan, it is also possible that, in order to assure success of a new location, Warren and his son might be compelled to purchase or lease property somewhere where there is more traffic and more exposure, such as Monroe. That would be one less auto repair facility in Sultan, forcing people in Sultan to take their business to Monroe and/or other locations. There would, of course, also be a commensurate drop in revenue not only from Warren and his son's business, but also from other businesses where people would shop in town while their vehicle was being serviced.

For all the above reasons, I would like to suggest that the City consider adopting some code amendments which would allow restoration and expansion of non-residential non-conforming uses and structures. For example:

**16.18.060 Extension or Enlargement of Non-Conforming Situations.**

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

1. *More than a ~~A~~ 50% increase in the total amount of space devoted to a non-conforming use; or*
2. Greater non-conformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements or other regulations such as parking requirements.

B. Subject to §§(D) of this section, a non-conforming use may be extended throughout any portion of a completed building that, when the use was made non-conforming by this unified development code, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building *if the result would be more than a 50% increase in the size of the use at the time it became non-conforming.*

C. A non-conforming use of open land may not be extended to cover more *than 150% of the* land that was occupied by that use when it became non-conforming.

[No changes to §§ D, E or F]

**16.18.070 Nonconformances -- Repair, maintenance and construction.**

[No change to § A.]

B. If a structure located on a lot where a non-conforming situation exists is damaged to an extent that the costs of repair or replacement would exceed ~~25~~ 75% 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.

[No changes to § C or D.]

As you can see, these proposed amendments would *regulate*, but not prohibit, expansion of non-conforming uses. These proposed amendments would allow an existing non-conforming use or structure to be increased by up to half of the existing space it is currently using. Thus the non-conforming use or structure could not be doubled in size, but it could be expanded by 50% of its current size. This would avoid the necessity for a successful non-conforming business to leave town in order to meet an increasing demand while not adversely affecting existing zoning.

For example, if a business were so successful that it needed to double in size, it would also be in a position to move to a new location. But if some expansion is needed in order to meet demand, but the demand is not such that the business could be doubled, it might force an owner to abandon his business at that location before it is economically feasible to do so. Moreover, unless the existing owner moves to a location at least five miles away -- which would be adverse to the City -- he would not simply sell his non-conforming business to a smaller competitor for whom the existing facilities would be adequate. Therefore, by regulating expansion to 50% of existing size, the benefits of transitioning are maintained while the dysfunction of promoting non-conformity is avoided.

Your consideration of this proposal is appreciated. Please advise as to how I can be of further assistance in moving this matter forward.

January 31, 2007  
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Yours very truly,

A handwritten signature in black ink, appearing to read "Gary Brandstetter". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Gary W. Brandstetter  
GWB/g

c: Warren Jerden

## Chapter 16.18

## NONCONFORMANCES

## Sections:

- 16.18.010 Nonconformances – Continuance.
- 16.18.020 Nonconformances – Lots smaller than required minimums.
- 16.18.030 Nonconforming lots – Setbacks.
- 16.18.040 Nonconforming lots – Applicability.
- 16.18.050 Nonconformances – Adjoining lots.
- 16.18.051 Nonconforming accessory dwelling units.
- 16.18.060 Extension or enlargement of nonconforming situations.
- 16.18.070 Nonconformances – 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 Nonconformances – 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 Nonconformances – 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 Nonconformances – 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 is 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.

D. 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.

E. 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.

F. 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 Nonconformances -- 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

## 16.18.080

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 city council 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 city council 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 city council 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 city council 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 city council 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 council may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

E. The council 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 city council 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)

CITY OF SULTAN  
Sultan, Washington

Ordinance 852-04

AN ORDINANCE OF THE CITY OF SULTAN CITY COUNCIL  
AMENDING SMC 16.12.040 URBAN CENTER ZONE BY DELETING  
FUNERAL HOMES/ MORTUARIES AS A PERMITTED USE, AND  
16.12.040 D BY ADDING RESTRICTIVE AUTOMOBILE-RELATED  
RETAIL TRADE FACILITIES USES AS A CONDITIONAL USE.

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

**Section 1.** SMC 16.12.040 B. Permitted Uses, is hereby amended by deleting, 4.  
Personal Service Establishments, L. Funeral Homes/Mortuaries as a permitted use.

**Section 2.** SMC 16.12.040 D. is hereby amended to add a Subsection 4 to read as  
follows:

1. Restricted Automobile Related Trade Facilities.  
Restricted Automobile Related Trade Facilities uses involving Retail Auto Parts  
Sales, Automobile Service Stations, Car Washes, Lube and Oil Service Facilities,  
and Minor Repair and Servicing conducted inside a building subject to all of the  
following restrictions, development, and performance standards:
  - A. Properties shall have frontage and direct vehicular access to State Highway No. 2.  
Access to Main Street maybe permitted if the applicant mitigates potential  
vehicular and pedestrian conflicts.
  - B. The use does not inflict upon the surrounding permitted land uses in the district  
smoke/odors (1), glare/heat (2), noise (3), vibration (4), or liquid and solid wastes  
(5), and water pollution detrimental to the health, welfare, or safety of the public  
occupying or visiting such areas.
  - C. The design of buildings and related improvements shall employ design standards  
to support and maintain the commercial character and intent of the area.

**Section 3.** SMC 16.12.040 Table of Dimensional and Density Requirements is hereby  
amended to add to "Uses as a Conditional Use, Restricted Automobile Related Trade  
Facilities". (1) **Retail Auto Parts Sales:** Units/Acre--, Area 3,500 sq. ft: width 30:  
depth 100: front 25: Each side 0: rear 15: max. bldg. Height 30 ft; maximum lot coverage  
80%. (2) **Automobile Service Station/Car Washes/ Lube and Oil Service** Units/Acre-  
, Area 5,000 sq. ft, width 05 depth, 100 front 25 total side yards 20rear 25 max. bldg  
height 30ft maximum lot coverage 25%. (3) **Automobile Minor Repair and Service  
Facilities<sup>3</sup>** Units/Acre--, 5,000 sq. ft. width 50depth 100 front 25 Each Side 25 rear 25  
max bldg. Height 30 Max lot coverage 25%. Footnotes also shall be added to this entry  
indicating the following performance standards.

1. Air pollution shall meet the ambient air quality standards specified by the Puget Sound Air Pollution Control Agency and all air contaminants therein.
2. All operations producing intense heat or glare shall be performed within an enclosure so as to completely obscure such operation from view from any point of the property line.
3. The maximum noise levels as measured at property line shall be those set forth in Chapter 173-60 WAC, titled "Maximum Environmental Levels".
4. No use shall cause earth vibration or concussions detectable without the aide of instruments beyond its property lot lines.
5. Liquid and solid wastes shall be disposed of on a regular basis in keeping with the best operating standards of the industry and in compliance with the regulations and requirements of local, regional, state or federal agencies having jurisdiction in waste disposal and environmental health and safety.

**Section 4: Repealer:** Any and all other Ordinances or parts of Ordinances of the City of Sultan inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**Section 5: 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 6. Effective Date:** This Ordinance shall be in full force and effective 5-(five) days after publications as required by law.

Regularly adopted by the Sultan City Council this 22nd day of September, 2004.

CITY OF SULTAN

By   
Benjamin R. Tolson, Mayor

Attest:

By   
Laura Koenig, City Clerk

Approved as to form:

By   
Thom H. Graafstra, City Attorney

Published: November 26, 2004

CITY OF SULTAN  
ORDINANCE NO. 07 XXX

**DRAFT**

1  
2  
3  
4  
5 **AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON AMENDING**  
6 **CHAPTER 16.18 NONCONFORMANCES SECTION 16.80.060**  
7 **EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS**  
8 **SUBSECTION (A) (1.), (B.) AND (C.) BY PROVIDING THE EXTENSION**  
9 **OR ENLARGEMENT OF A NONCONFORMING SITUATIONS BY NOT**  
10 **MORE THAN 50% OF THE TOTAL SPACE DEVOTED TO A NON-**  
11 **CONFORMING USE AND SECTION 16.18.070 NONCONFORMANCES—**  
12 **REPAIR, MAINTENANCE, AND CONSTRUCTION, SUBSECTION (B.) BY**  
13 **INCREASING THE DAMAGE OF REPAIR OR REPLACEMENT COST TO**  
14 **A STRUCTURE FROM 25% TO 75% OF THE APPRAISED VALUATION**  
15 **OF THE DAMAGED STRUCTURE.**

16  
17  
18 **WHEREAS**, the City of Sultan has received a request to amend SMC Chapter 16.18  
19 Nonconformances to provide for the enlargement of a commercial use in the Urban  
20 Center (UC) Zoning District; and

21  
22 **WHEREAS**, SMC Chapter 16.18 provides for the enlargement of Single-Family uses  
23 within all zoning districts WITHIN THE City of Sultan, and

24  
25 **WHEREAS**, the proposed amendment would allow the City to regulate the  
26 enlargement of nonconforming commercial uses under the same provisions and  
27 requirements established for nonconforming single-family uses within the City.

28  
29 **NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF**  
30 **SULTAN AS FOLLOWS:**

31  
32 **Section 1.** SMC Chapter 16.18 NONCONFORMANCES, Section 16.18.060, Extension or  
33 Enlargement of Non-Conforming Situations, Subsection (A.) (1.), (B.) and (C.) is hereby  
34 amended to read as follows:  
35

36 **16.18.060 Extension or enlargement of nonconforming situations.**

37  
38 A. Except as specifically provided in this Section, no person may engage in any activity  
39 that causes an increase in the extent of nonconformity of a nonconforming situation. In  
40 particular, physical alteration of structures or the placement of new structures on open  
41 land is unlawful if such activity results in:

42  
43 1. More than a ~~An~~ 50% increase in the total amount of space devoted to a  
44 nonconforming use; or

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

4           B. Subject to subsection (D) of this Section, a nonconforming use may be extended  
5 throughout any portion of a completed building that, when the use was made  
6 nonconforming by this Unified Development Code, was manifestly designed or arranged to  
7 accommodate such use. However, a nonconforming use may not be extended to  
8 additional buildings or to land outside the original building if the result would be more than  
9 a 50% increase in the size of the use at the time it became non-conforming.

10          C. A nonconforming use of open land may not be extended to cover more land than  
11 150% of the land that was occupied by that use when it became nonconforming.

12          D. The volume, intensity, or frequency of use of property where a nonconforming  
13 situation exists may be increased, and the equipment or processes used at a location  
14 where a nonconforming situation exists may be changed, if these or similar changes  
15 amount only to changes in the degree of activity rather than changes in kind and no  
16 violations of other requirements of this Section occur.

17          E. Notwithstanding subsection (A) of this Section, any structure used for single-family  
18 detached residential purposes and maintained as a nonconforming use may be enlarged  
19 or replaced with a similar structure of a larger size, so long as the enlargement or  
20 replacement does not create new nonconformities or increase the extent of existing  
21 nonconformities with respect to such matters as setback and parking requirements.

22          F. Notwithstanding subsection (A) of this Section, whenever: (1) there exists a lot with  
23 one or more structures on it; and (2) a change in use that does not involve any  
24 enlargement of a structure is proposed for such lot; and (3) the off-street parking or  
25 loading requirements of this Code that would be applicable as a result of the proposed  
26 change cannot be satisfied on such lot because there is not sufficient area available on  
27 the lot that can practicably be used for off-street parking or loading, then the proposed use  
28 shall not be regarded as resulting in an impermissible extension or enlargement of a  
29 nonconforming situation. However, the Applicant shall be required to comply with all  
30 applicable off-street parking and loading requirements that can be satisfied without  
31 acquiring additional land, and shall also be required to obtain satellite off-street parking if:  
32 (1) parking requirements cannot be satisfied on the lot with respect to which the permit is  
33 required; and (2) such off-street satellite parking is available within 50- feet of the site said  
34 satellite parking area is intended to serve, measured from property line to property line. If  
35 such off-street satellite parking is not reasonably available at the time the permit is  
36 granted, then the permit recipient shall be required to obtain it if and when it does become  
37 reasonably available. This requirement shall be a continuing condition of the permit. (Ord.  
38 715-00; Ord. 630 § 2 [16.06.160(F)], 1995)

39  
40  
41 **Section 2. SMC CHAPTER 16.18 NONCONFORMANCES, Section 16.18.070,**  
42 **Nonconformances--Repair, maintenance, and construction, subsection (B.) is hereby**  
43 **amended to read as follows:**

44  
45          B. If a structure located on a lot where a nonconforming situation exists is damaged to  
46 an extent that the costs of repair or replacement would exceed 75 percent of the  
47 appraised valuation of the damaged structure, then the damaged structure may be  
48 repaired or replaced only in accordance with a permit issued pursuant to this Unified

1 Development Code. This Section does not apply to structures used for single-family  
2 detached residential purposes, which structures may be reconstructed pursuant to a  
3 permit just as they may be enlarged or replaced.  
4

5 **Section 3 Repealer:** Any and all other Ordinance or parts of Ordinances of the City of  
6 Sultan inconsistent with the provisions or this Ordinance are hereby repealed to the extent  
7 of such inconsistency.  
8

9 **Section 3 Severability:** If any provisions of this Ordinance or its application to any person  
10 or circumstance are held invalid, the remainder of the Ordinance or applications of the  
11 provisions of the Ordinance to other person or circumstances is not affected.  
12

13 **Section 5. Effective Date:** This Ordinance shall be in full force and effect five days  
14 after publication as required by law.  
15

16 Passed by the City Council and approved by the Mayor this \_\_\_\_\_ day of  
17 \_\_\_\_\_, 2007.  
18

19 City of Sultan  
20

21  
22 By: \_\_\_\_\_  
23 Benjamin Tolson, Mayor  
24

25 Attest:

26  
27 By: \_\_\_\_\_  
28 Laura Koenig, City Clerk  
29

30  
31 Approved as to form:

32  
33 By: \_\_\_\_\_  
34 Thom H. Graafstra, City Attorney  
35  
36



# City of Sultan

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1-31-07

## Building Department Comments

The question has been raised regarding the number of and the types of nonconforming situations we have in the City.

There are two basic types of nonconformities:

Nonconforming uses, and then just about everything else that does not meet the current development standards, lot size, setback, off street parking and so forth. Without actually do a definitive study I can say nearly every property fronting on Main street has some form of nonconforming situation.

Of the preexisting nonconforming uses in our Urban Center the two most prevalent are the residential uses, and the automobile repair and service facilities.

The single-family detached residential uses are given special dispensation per 16.18.060, and can be replaced and even enlarged.

There are two auto repair and services in the urban center 609 Main, and 809 Main that have over the last ten years made serious inquires into expanding their operations.

Given the overall number of applications to expand a nonconforming use has historically been very low I see no significant change to our down town core if this code (16.18) where to be modified to allow some economic growth.

Although I doubt if this code change would be used by a half a dozen property owners throughout the entire City over the next 10 years, it does level the playing field. Commercial property owners would then have equal standing with single-family detached residential property owners, and this just seems innately fair to me.

Craig Bruner

**EXHIBIT**     E

# City of Sultan

## ENVIRONMENTAL DETERMINATION OF NONSIGNIFICANCE

The City of Sultan has conducted environmental review of the following project:

**File Name & Number:** March 2007 Unified Development Code Revisions

**Location:** City Wide

**Project Description:** City of Sultan, Unified Development Code Revisions to Title 16, Chapter 16.80 Nonconformance Sections 16.80.060 Extension or Enlargement of Non-Conforming Situations by providing for the extension or enlargement of a nonconforming Commercial situation currently not allowed under the current code by not more than 50% of the total space devoted to the Commercial Nonconforming Use and Section 16.18.070 Nonconformances—Repair, Maintenance and Construction, by increasing the damage or repair or replacement cost to a structure from 25% to 75% of the appraised valuation of the damaged nonconforming structure.

**Proponent:** City of Sultan - Community Development Department

**Lead Agency:** City of Sultan  
319 Main Street  
P.O. Box 1199  
Sultan, WA 98294-1199

**Responsible Official:** Rick Cisar, Director of Community Development

The City of Sultan has determined that this proposal does not have probable significant adverse impacts on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.031. This decision was made after review of a completed environmental checklist and other information on file with the City of Sultan. This information is available to the public on request.

This Determination of Nonsignificance (DNS) is issued under WAC 197-11-340. Issuance of this threshold determination does not constitute approval of the development permit. This proposal will be reviewed for compliance with all applicable City codes that regulate development activities.

**Comments:** Written comments may be submitted to the City of Sultan at the address above prior to 5:00 pm on March 23, 2007. Unless action is taken by the Lead Agency, this DNS shall become final at the end of the comment period.

**Appeal:** Any interested person may appeal this threshold determination in accordance with SMC 17.04.150. Appeals must be received within 14 days of the end of the comment period (by 5:00 pm, April 6, 2007). You should be prepared to make specific factual objections. For more information contact the City at (360) 793-2231.

Signature: 

Date: 3-9-07

*Marked  
3-8-07*

**Date of Issuance:** March 9, 2007

**DNS 07-02**

**Send:** Army Corp of Engineers, Department of Ecology, Department of Fish and Wildlife,  
Tulalip Tribes, WSDOT, and, Snohomish County PDS

**EXHIBIT**

E