

ORDINANCE NO. 3535

**AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON,
REPEALING AND REENACTING ORDINANCE 3534 WITH FURTHER
AMENDMENTS TO THE COMPREHENSIVE PLAN AND MOUNT VERNON
MUNICIPAL CODE BY ADOPTION OF THE
MOUNT VERNON SHORELINE MASTER PROGRAM**

WHEREAS, Mount Vernon has been operating under Skagit County's Shoreline Management Master Program since 1977; and

WHEREAS, the Shoreline Management Act (SMA) amendments of 2003, development and adoption of the Downtown and Waterfront Master Plan, on-going city-wide flood risk reduction planning activities, and the unique nature of Mount Vernon's natural and built shoreline environments, together demonstrated a need to develop a Shoreline Master Program (SMP) specific to the City's circumstances; and

WHEREAS, the SMA requires that local jurisdictions develop master programs that constitute use regulations for shorelines of statewide significance; and

WHEREAS, the deadline for Mount Vernon to adopt such a program is 2012; and

WHEREAS, Chapter 36.70A RCW, the Growth Management Act (GMA) mandates that the City of Mount Vernon maintain a Comprehensive Plan, which is a coordinated land use policy statement of the City, including policies directed at management of the City shorelines; and

WHEREAS, the GMA requires comprehensive plans and development regulations to be consistent; and

WHEREAS, the GMA also requires comprehensive plans to be both internally and externally consistent; and

WHEREAS, On December 3, 2009, notice of the potential adoption of the proposed amendment to the Comprehensive Plan and Municipal Code was duly transmitted to the Washington State Department of Commerce for the mandated sixty-day review, in compliance with RCW 36.70A.106 (1); and

WHEREAS, in compliance with all the terms, conditions, and procedures of the State Environmental Policy Act (SEPA) and Chapter 15.06 Mount Vernon Municipal Code, an environmental assessment of the proposed amendment to the Comprehensive Plan was conducted and, upon determination that no probable significant, potentially adverse environmental impacts would result from the amendment, a determination of non-significance was issued on February 4, 2010 and published on February 8, 2010, with no appeals having been filed prior to the close of the appeal period on February 23, 2010; and

WHEREAS, the requisite public hearing before the Planning Commission on August 3, 2010, which was continued to November 16, 2010, were preceded with appropriate notice, published on July 19, 2010 and November 1, 2010, respectively; and the requisite City Council hearing of December 1, 2010 was preceded with appropriate notice published on November 15, 2010; and

WHEREAS, the requirements for public participation in the development of this amendment as required by the GMA and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and,

WHEREAS, at the Planning Commission's public hearing on November 16, 2010 the Planning Commission after fully, fairly, and carefully considering the public input and staff materials relevant to the amendment recommended that the City Council move to adopt the proposed amendment to the Land Use Element of the Comprehensive Plan; and

WHEREAS, the Mount Vernon City Council has reviewed the proposed amendments to the Comprehensive Plan and Title 15 of the Municipal Code and the Findings of Fact, Conclusions of Law, and Recommendations of the Planning Commission; and

WHEREAS, the City Council finds that all procedural requirements for adoption of the attached amendments of the Comprehensive Plan as set forth in Chapter 35A.63 RCW and Chapter 36.70A RCW, and as set forth in the State Environmental Policy Act and Chapter 15.06 of the Mount Vernon Municipal Code have been complied with, and that adequate environmental review has been given; and

WHEREAS the City Council finds that the amendment to the Comprehensive Plan and amendment to its Municipal Code Chapter 15.07 adopting a new Shoreline Master Program under Ordinance No. 3508, for the City as reviewed and approved at the hearing on December 1, 2010 reflects the best interests of the citizens of the City of Mount Vernon, Washington, and reflects the desires of the public; and

WHEREAS the City forwarded the City Council approved Shoreline Master Program to the Department of Ecology for their required 30 day public comment period which ended on February 4, 2011 with no comments received by the Department of Ecology; and

WHEREAS as outlined in WAC 173-26-120, Ecology has made written findings and conclusions regarding the consistency of the amendment proposal with the policy of RCW 90.58.020 and applicable guidelines; and

WHEREAS on May 11, 2011 the City received the Department of Ecology's letter approving the Shoreline Master Program Update subject to required changes from the Department of Ecology. The City is also suggesting changes for the purpose of further clarifying the Shoreline Master Program Update; and

WHEREAS the changes by both the City and the Department of Ecology were included in the submittal received by the City from the Department of Ecology on May 11, 2011 and were made available to the public for review; and

WHEREAS with the City Council's acceptance of the required and suggested changes, the Shoreline Master Program will be determined to be final by the Department of Ecology following the Department of Ecology's required sixty day appeal period; and

WHEREAS the City has determined that several of the changes required by the Department of Ecology and suggested by the City are substantive in nature and therefore under Resolution 491 require an additional public hearing before the City Council to consider and approve the changes thereby satisfying the requirements for public participation; and

WHEREAS the requisite City Council hearing of June 1, 2011 was preceded with appropriate notice published on May 17, 2011; and

WHEREAS the City Council at their meeting on June 1, 2011 approved the changes as submitted along with a request for additional changes; and

WHEREAS following the adoption of Ordinance No. 3534 staff met with representatives of Dike District 17 and 3, parties that previously provided input, and the Department of Ecology and concluded that additional changes to the Shoreline Use Tables are necessary to maintain consistency with stated regulations within the SMP, federal levee maintenance programs, and to protect the ability of the Dike Districts to improve, maintain and repair flood protection structures, as well as other minor changes within the Shoreline Modification Table related to docks and piers; and

WHEREAS the requisite City Council hearing of June 22, 2011 was preceded with appropriate notice published on June 7, 2011; and

WHEREAS, the proposed Shoreline Master Program is found to be in compliance with both the Washington State Growth Management Act and the Shoreline Management Act.

NOW, THEREFORE,

THE CITY COUNCIL OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. That Ordinance No. 3534 is repealed in its entirety.

SECTION 2. The City Council adopts the Planning Commission's Findings of Fact, Conclusions of Law, and Recommendations in their entirety attached hereto.

SECTION 3. The City Council finds:

A. That the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance.

B. That the City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

SECTION 4. COMPREHENSIVE PLAN SHORELINE AREA GOALS

REPEALED The entire section, Shoreline Areas, of Element 2, the Land Use Element of the 2005 Comprehensive Plan of the City of Mount Vernon, as amended, consisting of Goals LU-6 through LU-14, is hereby repealed in its entirety.

SECTION 5. COMPREHENSIVE PLAN AMENDED

Exhibit 1 attached hereto and incorporated herein in its entirety by this reference is hereby adopted as the City of Mount Vernon Shoreline Master Program and the Goals included in Exhibit 1 shall be included within the Shoreline Areas Section of Element 2, the Land Use Element of the Comprehensive Plan of the City of Mount Vernon.

SECTION 6. City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION 7. CHAPTER 15.07 OF THE MOUNT VERNON MUNICIPAL CODE, AS ADOPTED UNDER ORDINANCE NO. 3534 IS REPEALED AND REENACTED

Exhibit 2 attached hereto and incorporated herein in its entirety by this reference is hereby adopted as the City's Shoreline Master Program codified under Chapter 15.07 of the Mount Vernon Municipal Code. Chapter 15.07 of the Mount Vernon Municipal Code shall be re-titled and now and shall read as follows:

Chapter 15.07

CITY OF MOUNT VERNON SHORELINE MASTER PROGRAM

Sections:

- 15.07.010** **Adopted.**
- 15.07.020** **Violations – Penalties.**
- 15.07.030** **Fees.**

15.07.010 **Adopted Shoreline Master Program.**

The City of Mount Vernon Shoreline Master Program is set forth in Exhibit 2, attached to Ordinance No. 3535. A copy of the City of Mount Vernon Shoreline Master Program

(and any amendments thereto) is available at the Mount Vernon Community and Economic Development Department.

15.07.020 Violations – Penalties.

Any person violating or failing to comply with any of the provisions contained in this chapter shall be subject to the enforcement provisions contained in MVMC Title 19, Code Enforcement.

15.07.030 Fees.

Applications for the various actions under the shoreline management master programs shall be accompanied by nonrefundable fees as set forth in MVMC 14.15.010.

SECTION 6. SEVERABILITY

In the event any term or condition of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this ordinance which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this ordinance are declared severable.

SECTION 7. EFFECTIVE DATE

The Shoreline Master Program shall become effective immediately upon final approval and adoption by the Department of Ecology, pursuant to RCW 90.58.090.

PASSED AND ADOPTED this 22nd day of June 2011.



BUD NORRIS, Mayor

SIGNED AND APPROVED this 17th day of June, 2011.



ALICIA D. HUSCHKA, Finance Director

Approved as to form:



Kevin Rogerson, City Attorney

Published _____

EXHIBIT 1

Following are the new Goals adopted as part of the Shoreline Management Master Program. These Goals shall replace the Goals that are currently within the 'Shoreline Areas' Section of Element 2, the Land Use Element of the Comprehensive Plan of the City of Mount Vernon.

SHORELINE AREAS: The City has an adopted the Shoreline Management Master Program; and this program is hereby adopted by reference. Following are the existing goals found in the adopted program.

ECONOMIC DEVELOPMENT GOALS:

Goal LU-6: Ensure healthy, orderly economic growth by allowing development and/or redevelopment activities in the Shoreline Management Zone (SMZ) that will be an asset to the community and local economy, are consistent with life safety and measures to reduce flood damage, and result in the least possible adverse effect on the quality of the shoreline and surrounding environment.

Goal LU-7: Protect current economic activity and uses in the SMZ that are consistent with the objectives of the Comprehensive Plan and the City of Mount Vernon Downtown and Waterfront Master Plan, and provide environmentally sensitive redevelopment and new development.

Goal LU-8: Seek opportunities that use both economic and environmental analyses to reduce flood risk, support development within the SMZ, and where appropriate, provide improvement of environmental functions.

Goal LU-9: Ensure that economic activity in the SMZ does not harm the quality of the site's environment or adjacent shorelands.

Goal LU-10: Encourage mixed-use development with public access along Mount Vernon's downtown waterfront and in those areas adjacent to the downtown waterfront that are suitable for compatible future redevelopment, consistent with the City's Comprehensive Plan and the 2008 City of Mount Vernon Downtown and Waterfront Master Plan.

SHORELINE USE GOALS:

Goal LU-11: Identify and reserve shoreline and water areas with unique attributes for specific long-term uses, including commercial, industrial, residential, mixed-use, recreational, and open space.

Goal LU-12: Ensure that activities and facilities are located on shorelines in a manner so as to achieve flood damage reduction and support of flood risk management projects.

Goal LU-13: Encourage shoreline uses that maintain or improve and enhance the quality of the environment as it is designated for that area by employing innovative features for purposes consistent with this program.

Goal LU-14: Encourage joint-use activities in proposed shoreline developments.

Goal LU-15: Encourage mixed-use development with public access on Mount Vernon's downtown waterfront consistent with the 2008 City of Mount Vernon Downtown and Waterfront Master Plan and the City's Comprehensive Plan.

Goal LU-16: Ensure that planning, zoning, and other regulatory programs governing lands adjacent to areas of shoreline jurisdiction are consistent with Shoreline Management Act and Growth Management Act policies and regulations and the provisions of the SMP.

Goal LU-17: In determining use priorities in cases where (i) competing uses of the same property are possible, and (ii) such competing uses are consistent with the City's Comprehensive Plan, give preference to uses that protect and restore ecological functions (where such protection or restoration is technically and economically feasible) and to water-dependent and water-related uses where such new uses will not displace existing lawful, non-water-oriented uses.

Goal LU-18: Note that mixed-use projects combining two or more of the categories above are encouraged and should be evaluated with respect to the degree that they achieve a balance of the priorities above and the provisions of the Master Program.

PUBLIC ACCESS GOALS:

Goal LU-19: To protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest.

Goal LU-20: Base public access on demand projections that take into account the interests of the citizens of the state to visit public shorelines with special scenic qualities or cultural or recreational opportunities.

Goal LU-21: Provide, protect, and enhance the public trail system that provides physical and visual access to shorelines, utilizing both private and public lands, increasing the amount and diversity of public access to the State's shorelines consistent with the natural shoreline character, private rights, and public safety.

Goal LU-22: To the extent feasible, construct a continuous pedestrian path along the Skagit River shoreline while providing protection of ecological functions.

Goal LU-23: Integrate public access to shorelines as a part of the City public trail system consistent with the adopted Park, Recreation & Open Space Plan.

CIRCULATION GOALS:

Goal LU-24: Provide, protect, and enhance the existing public trail system that provides physical and visual access to shorelines, utilizing public lands as much as possible, and private lands only in those cases where public access requirements have not already been satisfied through the prior acquisition of private property for construction of flood risk management and related public access projects, all consistent with the character of the natural shoreline, protection of private property rights, and public safety.

Goal LU-25: To the extent feasible, site land circulation systems that are not shoreline dependent in a manner that will reduce or eliminate interference with either natural shoreline resources or other appropriate shoreline uses.

CONSERVATION GOALS:

Goal LU-26: As a long-term goal, seek no further degradation of environmental functions.

Goal LU-27: Ensure that utilization of a natural resource takes place with minimum adverse impact to natural systems and quality of the shoreline environment.

Goal LU-28: Preserve the scenic quality of shoreline areas and vistas to the greatest extent feasible in areas outside of the urban core, within the Shoreline Residential, Urban Conservancy, Natural, and Aquatic environmental designations.

Goal LU-29: Minimize the loss of native vegetation and preserve tree cover in riparian areas by using conservation best management practices.

Goal LU-30: To the extent feasible, locate and design development to avoid impacts to shoreline natural resources and the functions provided by these resources. Shoreline development projects should follow best management practices that protect water quality. Encourage owners of shoreline property to control populations of invasive or noxious plants and animals as identified by the State of Washington Invasive Species Council.

RESTORATION GOALS:

Goal LU-31: Achieve no net loss of ecological functions and strive to improve impaired shoreline ecological functions with the goal of achieving improvement over time, when compared to the status at the time of adoption of the Master Program.

Goal LU-32: Where appropriate, undertake the restoration of natural ecological functions within the SMZ and associated jurisdictional wetlands.

Goal LU-33: Reclaim and restore areas that are biologically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline.

Goal LU-34: Support a comprehensive program of City-initiated ecological enhancements as identified in the Shoreline Restoration Report (Appendix B).

RECREATION GOALS:

Goal LU-35: Base recreational opportunities on demand projections consistent with the Mount Vernon Park, Recreation & Open Space Plan and the Countywide UGA Open Space Plan.

Goal LU-36: Increase opportunities in shoreline areas that can reasonably tolerate active or passive recreational uses without diminishing or degrading the integrity and character of the shoreline.

Goal LU-37: Coordinate with the City Department of Parks and Recreation to implement the goals of the Park, Recreation & Open Space Plan by optimizing opportunities for water-oriented recreation.

Goal LU-38: Integrate shoreline-related recreational elements into other regional trail systems and into federal, state, and local park and recreation planning.

HISTORIC AND CULTURAL GOALS:

Goal LU-39: Identify, protect, preserve, and restore important archaeological, historical, and cultural sites located in the SMZ for educational and scientific purposes and enjoyment of the general public.

Goal LU-40: Encourage educational projects and programs that foster an appreciation of the importance of shoreline management, water-related activities, environmental conservation, and local history.

FLOOD RISK MANAGEMENT GOALS:

Goal LU-41: Continue to work closely with the Dike Districts, Skagit County, and business and property owners in flood risk management planning.

Goal LU-42: Implement the flood risk management planning objectives and projects in the City of Mount Vernon Downtown and Waterfront Master Plan, approved Flood Protection Project, and approved engineering plans.

Goal LU-43: Participate in watershed-wide programs to reduce flood hazards and improve shoreline ecology.

Note: the remaining Goals with the Land Use Element will be renumbered starting with LU-44 following the revisions to this section.