

ORDINANCE NO. 3699

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, RELATING TO OFFENSES AGAINST PUBLIC MORALS, PROHIBITING CERTAIN CONDUCT; REPEALING AND REENACTING SECTIONS 9.19.030-9.10.040 OF THE MOUNT VERNON MUNICIPAL CODE, ADDING NEW CODE SECTIONS, AND PRESCRIBING PENALTIES.

WHEREAS, cities have the right and duty to enact laws for the protection of the public health, safety, general welfare, economic vitality and economic growth, and morals; and

WHEREAS, the City of Mount Vernon was incorporated in 1890, is a non-charter code city organized under Title 35A of the revised code of Washington with a population of thirty three thousand three hundred and fifty persons over twenty seven percent of which are under the age of 18. The City is largely defined by the Skagit River to north and east, a number of streams, some salmon bearing, and lower Skagit Valley agricultural lands which surround parts of the City. As stated in the City's comprehensive plan, one of the City's primary goals is to maintain, enhance, or establish those elements that create the quality of life for its residents by providing a rural, natural setting with small town character and community atmosphere; and

WHEREAS, the City's Comprehensive Plan was last updated on September 14, 2016 and provides in part for the following as goals and policies of the City to help protect the public health, safety, welfare, morals and economic vitality and growth of the City:

1. **GOAL LU-5** Enhance and improve the quality of single-family living environments throughout the City.
2. **Policy LU-1.2.1** Provide development regulations that create a compatible pattern of development within established neighborhoods. The development standards shall address densities, building setbacks, parking and landscaping
3. **Policy LU-8.2.6** Development should be designed to mitigate potential adverse impacts on adjacent properties with different zoning designations (i.e., residential or public zoning). Careful consideration of impacts from lighting, landscaping, and setbacks should all be evaluated during site design
4. **Goal LU-9:** To minimize potential noise impacts to the surrounding residential neighborhood all non-residential uses should be closed for business at reasonable times.
5. **Goal LU-10:** Development Regulations shall be adopted to reduce the negative visual, noise, odor, and exhaust impacts from garbage and recycling receptacles, loading docks, and drive through lanes
6. **Housing element goal 1.** promote the preservation, maintenance and enhancement of existing housing and residential neighborhoods throughout the City.
7. **Health and Wellness element goal hw-2.** Improve the safety of neighborhoods and public spaces.

WHEREAS, the Supreme Court has recognized the right of local governments to regulate offensive conduct in public places, including public nudity; and

WHEREAS, local laws that regulate conduct in public places should clearly describe the conduct that is proscribed and include appropriate safeguards against infringement on protected expression; and

WHEREAS, such conduct has had and is likely to have negative impacts on the community, including but not limited to criminal activities, exploitation of female employees, and exposure of minors to conduct that is appropriate only for adults; and

WHEREAS, the City council intends by this ordinance to protect the public health, safety, welfare, economic vitality and economic growth, and morals by revising existing code provisions and adopting new provisions relating to lewd conduct.

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

SECTION 1. Findings. That the City Council adopts the recitals set forth above as findings of fact supporting adoption of this Ordinance.

SECTION 2. That section 9.19.030 of the Mount Vernon Municipal Code is hereby repealed and reenacted, which reenacted section shall read as follows:

9.19.030 Definitions.

As used in this chapter, the following definitions shall apply:

- A. "Expose" means to reveal, exhibit, or otherwise render open to public view.
- B. "Expressive conduct" means any dance, opera, musical, dramatic work, or other exhibition or performance, whether or not part of an organized or formal event that constitutes protected speech under federal or state constitution.
- C. "Obscene" matter means any matter:
 - 1. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
 - 2. Which explicitly depicts or describes in a patently offensive way, as measured against contemporary community standards, sexual conduct as described in RCW 7.48A.010(2)(b); and
 - 3. Which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.
- D. "Public place" means an area generally visible to public view, and includes without limitation streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), and any place in which the general public has a right to be present or view, whether or not conditioned upon

- payment of a fee, and included, but is not limited to, buildings open to the general public (including those which serve food or drink or provide entertainment), doorways and entrances to buildings or dwellings and the grounds enclosing them and structures from which customers can be served through a drive-up or walk-up window, or other means, whether or not access is restricted according to age.
- E. "Public place provided or set apart for nudity" means an enclosed public restroom, an enclosed functional shower or locker room facility, an enclosed sauna, a motel room or hotel room designed and intended for sleeping accommodations, the location of a bona fide private club whose membership as a whole engages in social nudism or naturalism (a nudist resort or camp), and any similar public places in which nudity is necessarily and customarily expected outside of the home.
 - F. "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of any person.
 - G. "Sexual intercourse:"
 - 1. Has its ordinary meaning and occurs upon any penetration, however slight; and
 - 2. Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; and
 - 3. Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.
 - H. "Sexually explicit material" means any pictorial or three-dimensional material depicting sexual intercourse, masturbation, sodomy, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of sexual relationship, or emphasizing the depiction of adult human genitals; PROVIDED, HOWEVER, That works of art or of anthropological significance shall not be deemed to be within the foregoing definition. In determining whether material is prohibited for public display by this section such material shall be judged without regard to any covering which may be affixed or printed over the material in order to obscure genital areas in a depiction otherwise falling within the definition of this subsection.

SECTION 3. That section 9.19.040 of the Mount Vernon Municipal Code is hereby repealed and reenacted, which section shall read as follows:

9.19.040 Lewd Conduct.

- A. A person is guilty of lewd conduct if in a public place and under circumstances where such conduct is likely to be observed by a member of the public the person intentionally:

1. Exposes any of the following body parts of the person without a full and opaque covering in other than a public place provided or set apart for nudity:
 - a. Any part of the male or female genitals, pubic hair, pubic area, perineum, anus, or bottom one-half of the anal cleft;
 - b. Any part of the areola or nipple of the female breast; or
 - c. More than one-half of the part of the female breast located below the top of the areola, provided that the covered area shall be reasonably compact and contiguous to the areola.
 2. Exposes the male genitals in a discernibly turgid state, even if fully and opaquely covered.
 3. Touches, caresses, or fondles the genitals or female breast, whether clothed or unclothed;
 4. Masturbates; or
 5. Engages in sexual contact.
- B. Body paint, body dye, tattoos, latex, tape, or any similar substance applied to the skin surface, any substance that can be washed off the skin, or any substance designed to simulate or by which by its nature simulates the appearance of the anatomical area beneath it, is not full and opaque covering within the meaning of this section.
- C. This section shall not be construed to prohibit:
1. The act of breastfeeding or expressing breast milk;
 2. Classes, seminars, and lectures held for serious scientific or educational purposes;
 3. Expressive conduct that is not obscene, subject to the time, place, and manner restrictions contained in chapters 5.06 MVMC; 5.13 MVMC or 17.73 MVMC or other State or Federal law;
 4. Conduct of licensed adult entertainers within adult entertainment dance studios operating pursuant to chapter 5.06 MVMC ;
 5. Conduct of licensed employees working as escorts or nude house cleaners in adult businesses operating pursuant to chapter 5.13 MVMC , provided that the conduct is not exposed to a person under 18 years of age; or
 6. Conduct of a child under 10 years of age.
- D. Lewd conduct is a misdemeanor; however, if a person exposes himself or herself or performs any lewd act or facilitates lewd conduct as set forth in MVMC 9.19.050 to a person under the age of 14 years, then the lewd conduct is a gross misdemeanor.

SECTION 4. That a new section 9.19.060 of the Mount Vernon Municipal Code is hereby created which section shall read as follows:

9.19.060 Facilitating lewd conduct.

The owner, lessee, manager, operator, or other person in charge of a public place is guilty of facilitating lewd conduct if the person knowingly permits, encourages, or causes to be committed lewd conduct as defined in MVMC 9.19.040.

SECTION 5. That a new section 9.19.070 of the Mount Vernon Municipal Code is hereby created which section shall read as follows:

9.19.070 Severability.

If any section, sentence, clause or phrase of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this chapter.

SECTION 6. **Savings Clause.** All previous ordinances including Ordinance No. 3536 which may be repealed in part or their entirety by this ordinance, shall remain in force and effect until the effective date of this ordinance.

SECTION 7. **Effective Date.** This Ordinance shall take effect five days after its publication.

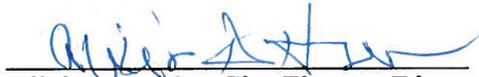
Adopted this 26th day of October, 2016

City of Mount Vernon



Jill Boudreau, Mayor

ATTEST:



Alicia Huschka, City Finance Director

Approved as to Form:



Kevin Rogerson, City Attorney

Date of Publication: Oct 30, 2016

Effective Date: _____

The Mount Vernon City Council adopted Ordinance 3699 on October 26, 2016. An Ordinance of the City of Mount Vernon, Washington, relating to offenses against public morals, prohibiting certain conduct; repealing and re-enacting Sections 9.19.030-9.19.040 of the Mount Vernon Municipal Code, adding new code sections, and prescribing penalties. Anyone wishing to view or receive the ordinance in its entirety should contact the Mount Vernon Finance Office, 910 Cleveland, Mount Vernon WA 98273.

Published: October 30, 2016