ORDINANCE NO. 3698

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, ENACTING INTERIM LICENSING AND ZONING REGULATIONS REPEALING AND RE-ENACTING CHAPTER 5.13 OF THE MOUNT VERNON MUNICIPAL CODE, ADDING A NEW CHAPTER 5.06 OF THE MOUNT VERNON MUNICIPAL CODE RELATING TO ADULT BUSINESS LICENSES, EMPLOYEES, AND ADOPTING REGULATIONS AMENDING MOUNT VERNON MUNICIPAL CODE TITLE 17; AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF INTERIM CONTROL REGULATIONS FOR THE ZONING, LICENSING AND REGULATION OF ADULT ENTERTAINMENT

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, extensive evidence has been presented to the City Council showing that the establishment and locations of adult entertainment businesses and related adult entertainment activities is associated with increased crime and/or depreciated property values, and is antithetical to the public health, welfare, safety, morals and economic vitality and growth of the community. For example, locally, Olympia, Seattle, Federal Way, Des Moines, Kelso, Everett, Snohomish County, Bellevue, among other Western Washington cities, towns and communities, have all concluded that this is the case. Nationally, studies and/or statistics from New Orleans, Denver, New York, Cleveland, Los Angeles, Louisville, Jefferson Parish Louisiana, and jurisdictions within Texas among other communities across the nation, have been cited as showing that adult entertainment businesses and activities are associated with increased crime and create nuisances that are contrary to the public health, safety, welfare, morals and economic vitality and growth of the community; and

WHEREAS, the evidence presented demonstrated that increases in crimes and types of crime involving prostitution, narcotics, sex-related crimes, and other disruptive behavior are either directly related to or associated with adult entertainment businesses and activities; and

WHEREAS, extensive evidence presented establishes that the establishment of adult entertainment businesses and their related activities is directly related to or associated with a decline in property values of nearby properties. For example, locally, Kent, Seattle, Des Moines, Bellevue, Olympia and Everett have all concluded that this is the case. Nationally, studies and/or statistics from, for example, Denver, Indianapolis, and New York have been cited as showing that adult entertainment businesses are directly related to or associated with decline in property values; and

WHEREAS, the evidence presented demonstrates that negative land use impacts including noise, trash, and traffic problems are directly related to or associated with adult entertainment businesses and their related activities; and

WHEREAS, extensive evidence presented establishes that the establishment of adult entertainment businesses and related activities is associated with a degradation of the quality of life within nearby neighborhoods and the community in general; and

WHEREAS, Over 27% of Mount Vernon's population is under the age of 18 and there is a compelling need to protect minors from criminal and unlawful activities, and their adverse secondary effects, associated with adult entertainment businesses, uses and activities; and

WHEREAS, at this time Mount Vernon has no licensing regulations regarding the operation of any sexually oriented adult entertainment business, and the City's current zoning regulations are old and out of date, do not conform to current legal standards or

judicial allowances for such regulations, have limited effectiveness and application, and only proscribe distance requirements from other sensitive uses; and

WHEREAS, the Mayor of Mount Vernon has established an "Adult Entertainment Zoning and Licensing Committee" made up of citizens and city staff who will conduct a comprehensive review of the City's current and outdated and limited adult entertainment regulations, zoning and licensing requirements, and report to the Planning Commission in January 2017 with recommendations regarding licensing and zoning regulations for adult entertainment businesses; and

WHEREAS, there is reason to believe that there is increased interest in locating sexually oriented adult entertainment businesses in the City of Mount Vernon as evidenced by recent inquiries regarding the establishment of adult retail stores and establishments who have a history of serving the public in dress that violates the City's current Lewd Conduct regulations; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390, as well as interpretative judicial decisions, authorize adoption of interim zoning controls and regulations with certain limitations, including the requirement to hold a public hearing on the adopted interim zoning controls/regulations within 60 days of its adoption, and the adoption of findings of facts and, if appropriate, a work plan; and

WHEREAS, in accordance with RCW 35A.63.220, interim zoning controls may be effective for no longer than six months, but may be effective for up to a year if a work plan is developed for related studies providing for such a longer period, and

WHEREAS, there is an urgent need, pending completion of the Adult Entertainment Zoning and Licensing Committee's work and the adoption of permanent zoning and regulatory ordinances and licensing requirements, to adopt interim regulatory ordinances regarding adult entertainment businesses and sexually oriented adult entertainment uses to address the well-recognized and documented adverse secondary impacts of such businesses, uses and activities while allowing reasonable opportunities for sexually oriented adult entertainment businesses to locate and conduct their businesses within the City; and

WHEREAS, staff has prepared a draft interim licensing ordinance which is supported by the legislative records provided herein.

WHEREAS, the City Council shall after appropriate public notice, hold a public hearing on December 7th, 2016 at a regularly held meeting of the City Council on this Ordinance to consider public testimony regarding adoption of this Ordinance and adopt findings of fact justifying its action in the event such findings are not adopted prior to the hearing; and

WHEREAS, the Council has adopted a work plan pursuant to RCW 35A.63.220 and RCW 36.70A.390 which includes multiple public hearings following public notices to

complete the adoption of permanent zoning and regulatory ordinances regarding adult entertainment businesses and sexually oriented adult entertainment uses; and

WHEREAS, the City on October 17, 2016 conducted a planning report with appendices providing a land use analysis and buildable lands analysis to study where there may be reasonable opportunities for sexually oriented adult businesses to locate while minimizing secondary impact to such uses identified as item 16 in the City's Legislative Record and adopts the study as further support of this Interim Control Ordinance; and

WHEREAS, the City Council finds that the regulations, modifications and amendments contained in this Interim Control Ordinance are appropriate and necessary for the preservation of the public health, safety, welfare, economic vitality and continued economic growth of the City, and to protect Mount Vernon citizens from the adverse secondary impacts of sexually oriented adult entertainment businesses, uses and activities, while allowing reasonable opportunities for sexually oriented adult entertainment businesses to locate and conduct their businesses within the City;

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 justifying adoption of this Interim Control Ordinance and incorporates those recitals as if set forth fully herein. The Council may adopt additional findings in the event that additional public hearings are held or evidence presented to the City Council. The City Council makes the following additional findings in support of the adoption of this Interim Control Ordinance based on the testimony and evidence presented:

1. The City Council takes legislative notice of the evidence of conduct, activities and crimes occurring in and around adult entertainment businesses located in other jurisdictions, which the Council hereby deems to be relevant to the experience in Mount Vernon, as reported in judicial opinions including for example, but not limited to, Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986), Ino Ino, Inc. v. City of Bellevue, 132 Wn.2d 103 (1997), DCR, Inc. v. Pierce County, 92 Wn.App. 660 (1998) and Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998);
2. The City Council takes legislative notice of the evidence of conduct, activities and crimes occurring in and around adult entertainment businesses located in other jurisdictions, which the Council hereby deems to be relevant to the experience in Mount Vernon,, as reported in the studies and findings of other city and county legislative bodies that have also adopted ordinances regulating adult entertainment businesses, including by way of example, but not limited to, the cities of Olympia, New Orleans, Seattle, Federal Way, Des Moines, Kelso, Everett, Snohomish County, Bellevue, and jurisdictions within Texas.
3. The operation of adult entertainment businesses has historically and regularly been accompanied by secondary effects that are detrimental to the public health, safety,

morals, economic vitality and growth, and general welfare of the citizens of Mount Vernon. Such secondary effects include, by way of example but not limited to the following:

a. Significant criminal activity and activities injurious to the public health, safety, morals, economic growth and vitality, and general welfare of the community;
b. Detrimental effects on nearby businesses and residential areas; and
c. A decline in property values in the area of the adult entertainment businesses.
d. The history of criminal and injurious activity includes without limitation prostitution, narcotics and liquor law violations, breaches of the peace, assaults, employment or involvement of minors, sexual conduct between customers or between customers and entertainers, the opportunity for the spread of sexually transmitted diseases and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.

Accordingly, there is a compelling need and interest to regulate adult entertainment businesses as provided in this ordinance to protect and promote the public health, safety, morals and general welfare of the citizens of Mount Vernon.

4. The resources available for responding to problems associated with adult entertainment businesses are limited and are most efficiently and effectively utilized through appropriate zoning and a licensing and regulatory program.
5. The license fees required in this ordinance are necessary as reasonable fees imposed to help defray the costs of processing the license applications and the substantial expenses incurred by Mount Vernon in regulating the adult entertainment industry. License requirements set forth in this ordinance are necessary to detect and discourage the involvement of organized crime in the adult entertainment industry, to prevent the exploitation of minors, to assure the correct identification of persons working in adult entertainment businesses, to effectively deploy its limited law enforcement resources and in order to effectively protect the public health, safety, morals and general welfare of its citizenry, the City must be fully apprised of the identity, age and criminal background of managers in adult entertainment businesses.
6. It is necessary to have a licensed manager on the premises of an adult entertainment business during all hours of operation so there will be a person responsible for the overall operation of the business, including the actions of customers, entertainers and other employees. To monitor the actions of these individuals, a manager must be able to observe these individuals at all times.
7. To prevent the exploitation of minors, to assure the correct identification of persons working in adult entertainment businesses, to effectively deploy its limited law enforcement resources and to effectively protect the public health, safety, morals, economic vitality and growth and general welfare of its citizenry, the City must be fully apprised of the identity, age and criminal background of entertainers in adult clubs.

8. Sexually oriented adult entertainment uses are directly related to or associated with increased rates of crime including but not limited to, prostitution, narcotics, and sex-related crimes.
9. Sexually oriented adult entertainment uses are directly related to or associated with declines in property values, especially those of residential areas.
10. Sexually oriented adult entertainment uses are directly related to or associated with degradation of the quality of life within a neighborhood.
11. Exposure of sexually oriented adult entertainment uses may be particularly harmful to children and minors creating serious adverse effects on their development as mature, disciplined, and social members of the community. This is of particular concern in the City of Mount Vernon where over 27% of the population is under 18 years of age.
12. Numerous other jurisdictions have attempted to address these adverse secondary effects by regulations which limit the zones in which sexually oriented adult entertainment uses are allowed and create buffers around such uses. The City of Mount Vernon relies on the validation of these methods by the United States Supreme Court, including in Renton v. Playtime Theater and Young v. American Mini Theaters, and by the Washington State Supreme Court in Northend Cinemas v. Seattle, which recognize local governments legitimate interest in protecting and preserving the quality of life through effective land use planning.
13. Areas within close walking distance of single and multiple family dwellings should be free of sexually oriented adult entertainment land uses.
14. Areas where children could be expected to walk, patronize or recreate should be free of sexually oriented adult entertainment land uses.
15. Sexually oriented adult entertainment land uses should be located in areas of the City which are not in close proximity to residential uses, churches, parks, trails, schools, child care facilities, libraries, game arcades and other similar facilities or uses.
16. Sexually oriented adult entertainment land uses should be regulated by zoning to separate them from other dissimilar uses just as any other land use should be separated from uses with characteristics different from and incompatible with itself.
17. A reasonable time, place, manner regulation of sexually oriented adult entertainment businesses and land uses will provide for the protection of the community and its property values, and protect the residents of the community from the adverse effects of such sexually oriented adult entertainment land uses, while providing those who desire to patronize sexually oriented adult entertainment land uses such an opportunity in areas within the City which are appropriate locations of sexually oriented adult entertainment businesses and land uses;
18. Data and studies provided by staff and/or consultants have identified those areas within the City of Mount Vernon that are appropriate for location of sexually oriented adult entertainment businesses and land uses, and these studies and this data establish sufficient number of proposed sites reasonably available to adult entertainment businesses to meet existing and demonstrated demand for adult entertainment venues in the City.

19. At this time Mount Vernon has no licensing regulations regarding the operation of most sexually oriented adult businesses, and the City currently has limited or outdated or ineffective zoning regulations which give rise to an urgent need pending completion of the Adult Entertainment Zoning and Licensing Committee's work and the adoption of permanent zoning and regulatory ordinances to adopt interim regulatory ordinances regarding adult entertainment businesses and sexually oriented adult entertainment uses to address the adverse secondary impacts of such businesses and uses while still allowing reasonable opportunities for sexually oriented adult entertainment businesses to locate and conduct their businesses within the City.
20. City recently awarded a bid to complete the City's downtown flood protection project in 2017 which, once completed, shall remove large areas of the City from the 100 year FEMA regulated floodplain, and this will likely trigger an increase in interest and redevelopment of the City's historical downtown. Absent further interim regulation, such development could include sexually oriented adult entertainment businesses to locate and conduct their businesses within this historic area of the City which is characterized as mixed commercial and residential uses where people of all ages congregate including but not limited to the City's new riverfront public plaza and river trail system.
21. The City has made significant changes to its comprehensive plan including completion of its comprehensive plan review mandated under Washington State's Growth Management Act, RCW 36.70A.130.
22. Since the City's adoption of limited zoning regulations permitting adult entertainment businesses to locate in certain areas of the City in 1995, over twenty years ago, large annexations of property have occurred as well as changes to the City's comprehensive plan and development regulations have occurred which include allowing further mixed use commercial and single or multifamily residential uses in areas of the City (including but not limited to its historic downtown) where adult entertainment is currently allowed making it possible for an adult entertainment business to be sited near, adjacent, or within the same structure as single and multiple family dwellings.
23. Proximity between entertainers and customers in adult clubs and businesses facilitates sexual conduct, prostitution, transactions involving controlled substances and other crimes.
24. To prevent sexual conduct from occurring between entertainers and customers, customers must be prohibited from any stage where adult entertainment occurs and be prohibited from passing tips, gratuities or other payments directly to entertainers performing on stage.
25. To discourage customers of bars and other alcohol-serving businesses from moving to adult entertainment businesses at two a.m. for "after hours" activities, and the increased likelihood of breaches of the peace and other criminal conduct that arise from those customers, and to reduce the adverse secondary effects of adult entertainment businesses on minors and the community, it is necessary and reasonable to restrict the closing time of adult entertainment businesses.

SECTION 2. New Section. A new Chapter 5.06, Adult Entertainment Dance Studios, Adult Entertainers and Adult Entertainment Dance Studio Managers is added to the Mount Vernon Municipal Code as follows:

ADULT ENTERTAINMENT DANCE STUDIOS, ADULT ENTERTAINERS AND ADULT ENTERTAINMENT DANCE STUDIO MANAGERS

Sections:

5.06.010 General provisions.
5.06.020 Definitions.
5.06.030 Adult entertainment dance studio license required.
5.06.040 Prima facie evidence of adult entertainment dance studio.
5.06.050 Adult entertainment dance studio license -- Application, issuance.
5.06.060 Other licenses/permits not waived.
5.06.070 Adult entertainment dance studio license --Renewal.
5.06.080 License for managers and adult entertainers required.
5.06.090 Manager's and adult entertainer's license -- Application, issuance.
5.06.100 Manager's or adult entertainer's license -- Renewal.
5.06.110 Adult entertainment dance studio regulations.
5.06.112 Manager on premises.
5.06.115 Additional requirements for adult entertainment dance studios.
5.07.117 Standards of conduct.
5.06.120 Inspections.
5.06.125 Activities not prohibited -- Liquor licenses.
5.06.130 Enforcement.
5.06.135 Suspension and revocation.
5.06.140 Disclaimer.
5.06.150 Civil penalties.
5.06.160 Criminal penalties.
5.06.170 Public nuisance.
5.06.180 Nonexclusive remedies.
5.06.190 Severability.

5.06.010 General provisions.

Unless specified otherwise in this chapter, the general provisions contained in chapter 5.01 MVMC shall not apply to the licenses required under this chapter.

5.06.020 Definitions.

For the purpose of this chapter the words and phrases used in this section shall have the following meanings unless the context otherwise requires:

A. "Adult entertainment" means:

1. Any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance or dance involves a person who is unclothed or in such costume, attire or clothing as to expose any portion of the female breast below the top of the areola or any portion of the pubic

region, anus, buttocks, vulva or genitals, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast, pubic region, anus, buttocks, vulva or genitals, or human male genitals in a discernibly turgid state, even if completely covered; or

2. Any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation or relation to the following specified sexual activities:
   a. Human genitals in a state of sexual stimulation or arousal;
   b. Acts of human masturbation, sexual intercourse or sodomy; or
   c. Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts; or
3. Any exhibition, performance or dance intended to sexually stimulate any patron and conducted in a premises or part of a premises where such exhibition, performance or dance is performed for, arranged with or engaged in with fewer than all patrons on the premises at that time, with separate consideration paid, either directly or indirectly, for such performance, exhibition or dance. For purposes of example only and not limitation, such exhibitions, performances or dances are commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing or straddle dancing.

B. "Adult entertainer" means any person who provides live adult entertainment within an adult entertainment dance studio as defined in this section whether or not a fee is charged or accepted for such entertainment.

C. "Adult entertainment dance studio" means any business, premises or location to which any member of the public is invited or admitted and where adult entertainment is provided on a regular basis as a substantial part of the premises activity.

D. "Applicant control person" means: (1) if a sole proprietorship, the sole proprietor; (2) if a non-publicly held partnership, whether general or limited, each partner and their respective ownership interest; or (3) if a non-publicly held corporation, every officer, director, shareholder owning 51% or more interest and any shareholder owning 50% or less who hold a significant interest in the business based on responsibility for management.

E. "Employee" means any and all persons, including manager and adult entertainers, who work in or at or render any services directly related to the operation of an adult entertainment dance studio, regardless of whether that person is deemed statutory employee, common law employee or independent contractor.

F. "Manager" means any person who manages, directs, administers, controls or is in charge of, the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any premises offering adult entertainment.

G. "Member of the public" means any customer, patron, club member, or person, other than an employee as defined in this section, who is invited or admitted to an adult entertainment dance studio.

H. "Operator" means any person operating, conducting or maintaining an adult entertainment dance studio.
I. "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, limited liability company, limited liability partnership or other legal entity, however organized.
J. "Sexual conduct" means acts of: (a) sexual intercourse within its ordinary meaning; or (b) any contact between persons involving the sex organs of one person and the mouth or anus of another; or (c) masturbation, manual or instrumental, of oneself or of one person by another; or (d) touching of the sex organs or anus, of oneself or of one person by another.
K. "Licensing authority" means the Finance Director of the City of Mount Vernon or any duly authorized representative.

5.06.030 Adult entertainment dance studio license required.

No person shall operate an adult entertainment dance studio without a valid adult entertainment dance studio license issued by the licensing authority.

5.06.040 Prima facie evidence of adult entertainment dance studio.

It shall be prima facie evidence that a business is an adult entertainment dance studio when one or more adult entertainers displays or exposes any portion of the breast below the top of the areola or any portion the pubic region, anus, buttocks, vulva and/or genitals.

5.06.050 Adult entertainment dance studio license -- Application, issuance.

A. Application for an adult entertainment dance studio license shall be made to the licensing authority on a form prepared and made available by the licensing authority, which forms may be revised from time to time.
B. An application for an adult entertainment dance studio license shall be signed by the applicant and shall contain or set forth the following information:
    1. The name, any aliases or previous names, address, telephone number, driver's license number, if any, social security number, if any and principal occupation, and age of the applicant and each applicant control person;
    2. The name, address, and principal occupation of the managing agent or agents of the business;
    3. For the applicant and each applicant control person, list any other licenses currently held for similar adult entertainment or sexually oriented businesses, including motion picture theaters and panorams, as defined in MVMC 17.72.130, whether from the county or another city, county or state, and the names and addresses of each licensed business;
    4. For the applicant and each applicant control person, list prior licenses held for similar adult entertainment or sexually oriented businesses, whether from the county or from another city, county or state, providing the names,

addresses and dates of operation for such businesses, and whether any business license or adult entertainment license has been revoked or suspended, and the reason therefor;

5. For the applicant and all applicant control persons, list any and all criminal convictions or forfeitures within five years immediately preceding the date of application, other than parking offenses or minor traffic infractions including the dates of conviction, nature of the crime, name and location of court and disposition;
6. For the applicant and all applicant control persons, a description of business, occupation or employment history for the three years immediately preceding the date of application;
7. The business name, business address, and the business telephone number of the establishment or proposed establishment together with a description of the nature of the business and a scale drawing or diagram showing the configuration of the premises for the proposed adult entertainment dance studio, including a statement of the total floor space occupied by the business, and marked dimensions of the interior of the premises. Performance areas, seating areas, manager's office and stations, restrooms and service areas shall be clearly marked on the drawing. An application for a license for an adult entertainment dance studio shall include building plans which demonstrate conformance with this chapter;
8. Any applicant or applicant control person whose business is registered with the Washington Secretary of State shall submit a current certificate of good standing or certificate of existence that shows the business is active and up to date with state reporting requirements;
9. The names, addresses, telephone numbers and principal occupation of every person, partnership, or corporation having any interest in the real or personal property utilized or to be utilized by the business or proposed business;
10. Authorization for the City, its agents and employees to obtain information to confirm any statements set forth in the application;
11. Each applicant shall verify, under penalty of perjury, that all of the information contained in the application is true, accurate and complete.

C. The licensing authority may request other information or clarification when necessary to determine compliance with this chapter.

D. Each application shall be accompanied by a non-refundable fee as follows:
    1. Adult entertainment dance studio: $350.00 per year
    2. Adult entertainer: $55.00 per year
    3. Adult entertainment dance studio manager: $55.00 per year
    4. The fee shall not be prorated.

E. As soon as practicable following receipt of a completed application for an adult entertainment dance studio license, the licensing authority shall transmit copies of the application to the police chief, fire marshal, and department of community and development services for their investigation and review to determine compliance of the proposed adult entertainment dance studio with the laws and regulations which each department administers. Each department shall, within 25

days of the date of such application, inform the licensing authority in writing of the results of its investigation and review. No license may be issued unless each department reports that the application and premises comply with the relevant laws.

F. Within 30 days of receipt of a fully completed application for an adult entertainment dance studio license and payment of the fee, the licensing authority shall issue the license, except that the licensing authority shall deny the application if issuance of a license will violate any provision of Chapter 5.06 MVMC, the zoning ordinance for the city, MVMC Title 17, or any other law or ordinance, or if the licensing authority determines that the applicant has made a false, misleading or fraudulent statement of material fact on the application for a license. A person aggrieved by denial of a license under this subsection may appeal the denial to the City hearing examiner. The appeal shall be filed and processed as set forth in MVMC 19.15.030 and MVMC 19.15.040

G. An adult entertainment dance studio license shall expire on December 31 of the year in which it is issued.

H. An adult entertainment dance studio license shall not be issued to any person under the age of 18 years.

I. An adult entertainment dance studio license, if granted, shall state on its face the name of the person or persons to whom it is issued, the expiration date, the doing-business-as name and the address of the licensed establishment.

J. A license issued to an adult entertainment dance studio is not transferable to any person, entity or to any other business or property.

K. It is the responsibility of the licensee issued a license under this section to keep the information on the license current at all times.

L. The licensee shall notify the licensing authority of any change in address, business name, or in the officers, directors or partners of such business, within 14 days of any such change and shall supply the same information as required for an initial adult entertainment dance studio license application.

5.06.060 Other licenses/permits not waived.

(1) The issuance of an adult entertainment dance studio license shall not be construed or act as absolving the licensee of complying with the requirements of any governmental agencies, including, but not limited to, federal, state, city and county laws or ordinances relating to buildings, fire, health, sanitation, zoning, taxation, public safety, and all other requirements and conditions provided by law.

(2) The filing of an application for a license under this chapter shall not give the applicant the right to engage in the activity covered prior to the issuance of a license.

5.06.070 Adult entertainment dance studio license --Renewal.

An adult entertainment dance studio license may be renewed by following the application procedure set out in MVMC 5.06.050. It shall be the duty of the licensee to make application for renewal prior to the expiration of an outstanding license. An expired license shall not be automatically renewed and will only be renewed upon a renewal

application by the applicant following the procedure in MVMC 5.06.050. A decision of the licensing authority to deny an application for renewal shall be stayed and the prior license shall remain in effect during administrative and judicial review of that decision.

5.06.080 License for managers and adult entertainers required.

No person shall work as a manager or adult entertainer without a valid manager's or adult entertainer's license issued by the licensing authority.

5.06.090 Manager's and adult entertainer's license -- Application, issuance.

A. Application for a manager's or adult entertainer's license shall be made to the licensing authority on a form prescribed by the licensing authority.
B. An application for a manager's or adult entertainer's license shall contain or set forth the following information:
1. The applicant's name, home addresses (current and former), home telephone number, date of birth, social security number, alias (past or present), and stage name;
2. The business name and address where the applicant intends to dance or work;
3. Authorization for the City, its agents and employees to investigate and confirm any statement set forth in this application.
C. With the application the applicant shall present documentation that he or she has attained the age of 18 years. Any of the following shall be accepted as documentation of age:
1. A motor vehicle operator's license issued by any state bearing the applicant's date of birth and photograph;
2. An identification card issued by any governmental agency bearing the applicant's date of birth and photograph;
3. An official passport issued by the United States of America;
4. An immigration card issued by the United States of America.
D. Each applicant shall be photographed.
E. Each application shall be accompanied by a non-refundable fee as provided in MVMC 5.06.050 D. The fee shall not be prorated.
F. Upon receipt of a completed application for a manager's or adult entertainer's license and proof of compliance with MVMC 5.06.090 D required by this chapter, the licensing authority shall issue the license. As soon as possible, following the issuance of a manager's or adult entertainer's license, the licensing authority shall transmit copies of the application and license to the Mount Vernon Police Department.
G. A manager's or adult entertainer's license shall expire on December 31 of the year in which it is issued.
H. A manager's or adult entertainer's license shall entitle a manager or adult entertainer to perform or work only at the location indicated on the manager's or adult entertainer's license. If a manager or adult entertainer changes his or her location where employed or performing during the license term, the license certificate must be returned to the licensing authority for reissuance, upon

payment of the fee set out in MVMC 5.06.050 D, indicating the new location of employment.

I. A manager's or adult entertainer's license shall not be issued to any person under the age of 18.

J. It is the responsibility of all managers and adult entertainers issued a license under this section to keep the information on their license current and accurate at all times.

K. Each applicant shall verify, under penalty of perjury, that all of the information contained in the application is true, accurate and complete.

5.06.100 Manager's or adult entertainer's license -- Renewal.

A manager's or adult entertainer's license may be renewed by following the application procedure set out in MVMC 5.06.090. It shall be the duty of the licensee to make application for renewal prior to the expiration of an outstanding license.

5.06.110 Adult entertainment dance studio regulations.

A. No person shall advertise, or cause to be advertised, an adult entertainment dance studio without a valid adult entertainment dance studio license issued pursuant to this chapter.

B. No later than March 1 of each year an adult entertainment dance studio licensee shall file a verified report with the licensing authority showing the licensee's gross receipts for the preceding calendar year.

C. An adult entertainment dance studio licensee shall maintain and retain for a period of two years the names, addresses, and ages of all adult entertainers and managers.

D. No adult entertainment dance studio licensee shall employ as a manager or adult entertainer a person under the age of 18 years or a person not licensed pursuant to this chapter.

E. No person under the age of 18 years shall be admitted to an adult entertainment dance studio.

F. An adult entertainment dance studio shall be closed between 2:00 a.m. and 8:00 a.m.

G. No adult entertainment dance studio licensee shall serve, sell, distribute, or suffer the consumption or possession of any intoxicating liquor or controlled substance upon the premises of the licensee.

H. An adult entertainment dance studio license issued pursuant to this chapter shall be conspicuously displayed at the place of businesses during normal business hours.

I. Manager and adult entertainer licenses issued pursuant to this chapter shall be maintained on the premises of the business during normal business hours.

J. No adult entertainment shall be visible outside of the adult entertainment dance studio, nor any photograph, drawing, sketch or other pictorial or graphic representation which includes lewd matter as defined in RCW 7.48A or display of sexually explicit material in violation of RCW 9.68.130.

K. No member of the public shall be permitted during normal business hours to enter into any of the non-public portions of the adult entertainment dance studio, which shall include but are not limited to: the dressing rooms of the adult entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas. Provided, that persons delivering goods and materials, food or beverages, or performing maintenance or repairs to the premises or equipment on the premises may be permitted into non-public areas to the extent required to perform their job duties.

5.06.112 Manager on premises.

A. A licensed manager shall be on duty at an adult entertainment dance studio premises at all times that adult entertainment is being provided. The name of the manager on duty shall be prominently displayed during business hours.
B. The licensed manager on duty shall not be an adult entertainer. It shall be the responsibility of the manager to verify that any employee or adult entertainer working or performing within the establishment possesses a current and valid employee's or adult entertainer's license as required by this chapter.
C. The license manager shall not permit any violations of this chapter to occur.

5.06.115 Additional requirements for adult entertainment dance studios

Every adult entertainment dance studio shall be physically arranged in such a manner that:

A. Performance Area. The performance area of the adult entertainment dance studio where adult entertainment is performed shall be a stage or platform at least 18 inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least 6 feet from all areas of the premises to which members of the public have access. A continuous railing three to five feet in height above the floor and located at least six feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one manager's station. Visibility shall not be blocked or obstructed in any way by doors, curtains, drapes or any other obstruction whatsoever.
B. Illumination. Sufficient lighting shall be provided in and about the parts of the premises which are open to and used by the public so that all objects are plainly visible at all times and all parts of such premises shall be illuminated so that patrons or others on any part of the premises shall be able to read the Washington State Liquor Control Board card or other written instrument, printed in eight-point type.
C. Signs. A sign at least two feet by two feet, with letters at least one inch high shall be conspicuously displayed in the public area(s) of the adult entertainment dance studio, stating each of the following:

1. A list of any and all adult entertainment provided on the premises with the specific fee or charge in dollar amounts for each adult entertainment listed; and

2. "THIS ADULT ENTERTAINMENT DANCE STUDIO IS REGULATED BY SNOHOMISH COUNTY. DANCERS ARE:

A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT
B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE
C. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE
D. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA."

5.06.117 Standards of conduct.

The following standards of conduct must be adhered to by employees of any adult entertainment dance studio while in any area in which members of the public are allowed to be present:

A. No employee or adult entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola, or any portion of the pubic region, anus, buttocks, vulva or genitals except upon a stage at least 18 inches above the immediate floor level and removed at least 6 feet from the nearest member of the public.
B. No employee or adult entertainer mingling with members of the public shall be unclothed or in less than opaque and complete attire, costume or clothing as described in subdivision (1) of this section, nor shall any male employee or adult entertainer appear at any time with his genitals in a discernibly turgid state, even if completely and opaquely covered.
C. No employee or adult entertainer mingling with members of the public shall wear or use any device or covering exposed to view which simulates the breast of a female below the top of the areola, vulva, genitals, anus, buttocks, or any portion of the pubic region or human male genitals in a discernibly turgid state, even if completely and opaquely covered.
D. No employee or adult entertainer shall caress, fondle or erotically touch any member of the public.
E. No employee or adult entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or adult entertainer.
F. No employee or adult entertainer shall sit on the lap of a member of the public or separate the legs of a member of the public.
G. No employee or adult entertainer shall perform simulated non-obscene acts of sexual conduct except upon a stage at least 18 inches above the immediate floor level and removed at least 6 feet from the nearest member of the public.
H. No employee or adult entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the non-stage areas of the adult entertainment dance studio unless that dance, performance or exhibition is performed at a torso-to-torso distance of no less than 4 feet from the member or members of the public for whom the dance, performance or exhibition is performed.

I. No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the adult entertainer. No adult entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the adult entertainer by any member of the public. Any gratuity offered to any adult entertainer performing upon the stage area must be placed into a receptacle provided for receipt of gratuities by the adult entertainment dance studio or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer or employee conducting any performance, dance or exhibition in or about the non-stage area of the adult entertainment dance studio shall be placed into the hand of the adult entertainer or employee or into a receptacle provided by the adult entertainer or employee, and not upon the person or into the clothing of the adult entertainer or employee.

J. No employee or adult entertainer shall perform actual acts of sexual conduct as defined in this chapter, or any act which constitutes a violation of RCW 7.48A, the Washington Moral Nuisances Statute.

5.06.120 Inspections.

All books and records required to be kept pursuant to this chapter or Washington State law shall be open to inspection by the licensing authority, city police, or their agents during the hours when the adult entertainment dance studio is open for business. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.

5.06.125 Activities not prohibited -- Liquor licenses.

A. This chapter shall not be construed to prohibit:

1. Plays, operas, musicals or other dramatic works which are not obscene as defined in Section 5.06.125 B below;
2. Classes, seminars and lectures held for serious scientific or educational purposes; or
3. Exhibitions or dances which are not obscene as defined in section 5.06.125 B below.

These exemptions shall not apply to the sexual conduct defined in MVMC 5.06.020, or the sexual conduct described in RCW 7.48.010 (2)(b)(ii) and (iii).

B. Whether or not an activity is obscene shall be judged by consideration of the following factors:

1. Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex; and
2. Whether the activity 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. Whether the activity taken as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

5.06.130 Enforcement.

The licensing authority, community and economic development director and/or police chief or designated representatives are authorized and directed to enforce the terms and provisions of this chapter.

5.06.135 Suspension and revocation.

A. The licensing authority may, at any time upon the recommendation of the Police Chief or as provided below suspend, revoke or impose conditions on any license issued under this chapter:
1. Where such license was procured by fraud or false representation of fact; or
2. For the violation of, or failure to comply with the provisions of this chapter or any other similar local or state law by the licensee or by any of its servants, agents or employees when the licensee knew or should have known of the violations committed by its servants, agents, or employees; or
3. For the conviction of the licensee of any crime or offense involving prostitution, promoting prostitution, or transactions involving controlled substances as defined in RCW Article 69.50 committed on the premises, or the conviction of any of the licensee's servants, agents or employees of any crime or offense involving prostitution, promoting prostitution, or transactions involving controlled substances as defined in RCW Article 69.50 committed in the licensed premises when the licensee knew or should have known of the violations committed by its servants, agents or employees.

B. A license procured by fraud or misrepresentation shall be revoked. Where other violations of this chapter or other applicable ordinances, statutes or regulations are found, the licensing authority shall suspend a license issued under this chapter for 30 days for the first violation, 90 days for the second violation and 120 days for the third and subsequent violations within a 24 month period, not including periods of suspension.

C. No license suspended or revoked under the provisions of this chapter may be renewed during any period of suspension.

D. The licensing authority may revoke a license upon the grounds for a suspension when a license has been suspended three times within a 24 month period, not including periods of suspension.

E. The procedure for suspension, revocation or conditioning is initiated by the service of a notice and order issued by the licensing authority, pursuant to Chapter 19.15 MVMC.

5.06.140 Disclaimer

No license/permit issued by the City of Mount Vernon shall be construed as an endorsement by the City of Mount Vernon, including any endorsement of any licensee or

activity incidental to any licensed activity. The City of Mount Vernon assumes no liability or responsibility of any sort as a result of the issuance of any license/ permit.

5.06.150 Civil penalty.

In addition to or as an alternative to any other penalty provided herein or by law, any person who engages in any activity for which a license or permit is required pursuant to the provisions of this Chapter while his or her license is suspended or revoked, or in violation of any condition of a license, or who fails to obtain a license or permit prior to engaging in the activity for which a license or permit is required, or who otherwise violates any license or permit law shall pay as set forth in Chapter 19.35.010 MVMC. The civil penalty may be assessed and collected by use of all appropriate legal remedies, including the procedures set out in Title 19 of the MVMC.

5.06.160 Criminal penalty.

Except as otherwise specifically provided in this Chapter, any person violating or failing to comply with any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $1,000 or by imprisonment in the county jail for a period not exceeding 90 days, or both. Each day that any person conducts any business, calling, profession, trade, occupation or activity in violation of any provision of this chapter shall constitute a separate offense and be punished as such.

5.06.170 Public nuisance.

Any activity, act, or conduct undertaken without a license or permit required by this Chapter constitutes a public nuisance and such activity, act, or conduct may be abated by the licensing authority or police chief by securing an appropriate order from the court.

5.06.180 Nonexclusive remedies.

The remedies for violation of this Chapter set out in this Chapter are not exclusive.

5.06.190 Severability.

If any portion of this chapter, or its application to any person or circumstance, is held invalid, the remainder or application to other persons or circumstances shall not be affected.

SECTION 3. Chapter 5.13, CABARETS, of the Mount Vernon Municipal Code is hereby repealed and reenacted, which Chapter shall read as follows:

Chapter 5.13
ADULT BUSINESSES AND EMPLOYEES

Sections:

5.13.005 General provisions.
5.13.010 Definitions.
5.13.015 Adult businesses-License required.
5.13.020 License fees and term.
5.13.025 Investigation required.
5.13.030 Fingerprinting required.
5.13.035 Photograph required.
5.13.040 Underage employees.
5.13.045 Unlawful to employ unlicensed person.
5.13.050 Manager license required.
5.13.055 Employee license required.
5.13.060 Exclusions.

5.13.070 Standards of conduct.
5.13.075 Notice to public.
5.13.080 Prima facie evidence of adult sales practice.
5.13.085 Signs.
5.13.090 Enforcement.
5.13.095 Nuisance declared.
5.13.100 Additional enforcement.
5.13.105 Relation to other laws
5.12.110 Severability

5.13.005 General provisions.

Unless specified otherwise in this chapter, the general provisions contained in chapter 5.04 MVMC shall apply to licenses required by this chapter.

5.13.010 Definitions.

The words and phrases in this chapter, unless the context otherwise indicates, shall have the following meanings:

A. "Adult entertainment" means:

1. Any exhibition, performance or medium which is distinguished or characterized by displays of less than completely and opaquely covered human genitals, pubic hair, pubic area, perineum, anus, buttocks, or female breast below the top of the areola; or
2. Any exhibition, performance or dance conducted in a premises where such exhibition, performance or dance is performed within the view of one or more members of the public and is intended or is likely to sexually stimulate any member of the public.

B. "Adult entertainment book store" means any business from which minors are excluded and in which the purchase, rental, viewing or use of books, magazines, newspapers, movie films, devices, slides, or other photographic or written

reproductions distinguished or characterized by their emphasis on matter depicting, describing, or relating to adult entertainment or adult entertainment material make up 25% or more of the stock in trade.

C. "Adult entertainment business" means any establishment or premises other than a business subject to chapter 5.06 MVMC or 5.56 MVMC, which:

1. Engages in adult sales practice; or
2. Has at least 25% of its trade in the display, barter, rental, or sale of a medium which meets the criteria of adult entertainment as defined by this chapter including but not limited to: adult entertainment bookstores, adult entertainment movie theaters, adult tanning salons, escort businesses and nude house cleaning businesses; or

D. "Adult hotel" means a hotel, motel, or similar commercial establishment which offers a sleeping room for rent for a period of time less than 10 hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

E. "Adult entertainment movie theater" means any establishment, from which minors are excluded and where the principal use of the premises consists of the showing of motion pictures, slides, or photographic or other visual reproductions, where the subject matter meets the criteria of adult entertainment as defined in this chapter and where fees of any kind are charged. This definition shall include establishments wherein the above mentioned medium is the major attraction on a regular basis and establishments wherein the above mentioned medium is shown at least 25% of the showing time of the theater.

F. "Adult sales practice" means any activity which is distinguished or characterized by a person being in a state of partial nudity while conducting or otherwise engaged in retail sales of goods or services under circumstances where such conduct is likely to be viewed by a member of the public.

G. "Adult tanning salon" means any establishment which offers tanning services to a member of the public and in which adult entertainment takes place.

H. "Customer" means a person patronizing a business for which an adult business license is required by this chapter.

I. "Employee" means any and all persons who work in or at or render any services directly related to the operation of an adult entertainment business regardless of whether that person meets the criteria of a statutory employee, common law employee or independent contractor.

J. "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

K. "Escort business" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts.

L. "Manager" means any person who manages, directs, administers or is in charge of, the affairs and/or conduct of any portion of any activity involving adult entertainment occurring at any place offering adult entertainment.

M. "Member of the public" means any person other than a manager or employee as defined in this section.

N. "Nude or state of nudity" means a state of dress or undress such that any of the body parts described in the City's lewd conduct ordinance, MVMC 9.19.040, is exposed to view or covered with anything other than a full and opaque covering within the meaning of that ordinance.

O. "Nude house cleaning business" means a person or business which offers house cleaning services in which the house cleaner is in a state of nudity.

P. "State of partial nudity" means a state of dress or undress not constituting a state of nudity in which any of the following body parts or portions thereof is exposed to view or covered with anything other than a full and opaque covering:

1. Any part of the buttocks or anal cleft; or
2. Any part of the female breast located below the top of the areola.
3. Items commonly known as pasties, G-strings, T-backs, dental floss, and thongs; 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 which by its nature simulates the appearance of the anatomical area beneath it, is not full and opaque covering within the meaning of this subsection.

Q. "Stock in trade" means the greater of: (a) the retail dollar value of all prerecorded video tapes, discs, books, magazines or similar material readily available for purchase, rental, viewing or use by patrons of the establishment, including paper or electronic form, excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or (b) the total number of titles of all prerecorded video tapes, discs, books, magazines, or similar material readily available for purchase, rental, viewing or use by patrons of the establishment, including paper or electronic form, excluding material located in any storeroom or other portion of the premises not regularly open to patrons.

5.13.015 Adult businesses-License required.

No person shall operate within the City of Mount Vernon an adult entertainment business, an adult hotel, an adult tanning salon, an escort business, or a nude house cleaning business without a valid adult business license issued by the licensing authority. No escort business or nude house cleaning business shall provide services within the City of Mount Vernon without a valid license issued by the licensing authority.

5.13.020 License fees and term.

The fees for the licenses required by this chapter are as follows:

A. Adult business location: $265.00;
B. Adult business employees: $115.00;
C. Adult business manager: $115.00.

The terms for these licenses is one year from date of issuance.

5.13.025 Investigation required.

Applicants seeking a license under this chapter shall have applicant's application forwarded to the Mount Vernon Police Department with any supporting documents to be investigated as follows:

A. Whether any outstanding criminal violations/charges exist.
B. Whether any legitimate complaints exist regarding the applicant's past business practices that would have any bearing or effect on the issuance of the license/permit under consideration.
C. Whether the person is prohibited by law from engaging in this type of activity.
D. Whether the application should otherwise be disapproved based upon public safety considerations.
E. Within 30 days following the receipt of the application from the licensing authority, the police chief or his or her designee make a written recommendation on the issuance of the license setting forth the results in his investigation and his recommendation as to the disposition of the application. The police chief or his or her designee may request an extension to complete his investigation of no more than 30 days, which request shall be granted upon a showing of reasonable cause.

5.13.035 Photograph required.

Applicants seeking an employee or manager license as required by this chapter shall submit photographs when applications are submitted. Each applicant, or party signing the application, shall submit four 2" x 2" photographs taken within the last six months of the date of application showing three full face and one full length front-facing shot. These photographs shall be provided at the expense of the applicant. The applicant shall certify under penalty of perjury that the photograph is a true, accurate and unaltered depiction of the applicant. The license, when issued, shall have affixed to it a photograph of the applicant, or the party signing the application, shall be posted at all times in a conspicuous place in the establishment where such license is enjoyed, and shall not be tampered with in any manner. On renewal of a license applicants must resubmit photographs as described in this section.

5.13.040 Underage employees.

It shall be unlawful for any owner, proprietor, manager, or person in charge of any facility regulated by this chapter, to have an employee in such establishment, under the age of 18 years.

5.13.045 Unlawful to employ unlicensed person.

It shall be unlawful for any owner, proprietor, manager, or person in charge of any escort business, nude house cleaning business, adult tanning salon, or business using an adult sales practice, as regulated by this chapter, to employ in such establishment, any person who does not have a valid employee license as required by MVMC 5.13.055.

5.13.050 Manager license required.

No person shall work as a manager in nude house cleaning business, escort business, adult tanning salon, or business using an adult sales practice, as regulated by this chapter, without a valid license issued by the licensing authority.

5.13.055 Employee license required.

A. It shall be unlawful for any person to work in the following adult entertainment businesses, in the capacities outlined below, without a license as provided for in this chapter:
1. "nude house cleaning"--any person actually performing or assisting in the performance of nude house cleaning, as defined in this chapter;
2. "escort business"--any person acting as an escort as defined by this chapter;
3. "adult tanning salons"--any person performing any services in a closed room while the patron is present; or
4. business using an "adult sales practice"-any person who is in a state of partial nudity while conducting or otherwise engaged in retail sales of goods or services.

B. All licenses required shall be invalid as to any adult entertainment business during any period in which the employer is not engaged in business whether by reason of choice or failure of the employer to operate a business or by reason of lapse, suspension or revocation of employer's license.

C. An employee license shall entitle the employee to work only at the adult entertainment business indicated on the employee's license. If an employee changes his or her employment during the license term, the license certificate must be returned to the licensing authority or reissuance, upon payment of the fee set out in MVMC 5.13.020, indicating the new place of employment.

5.13.060 Exclusions.

A. This chapter shall not be construed to prohibit:
1. Plays, operas, musicals, dramatic works, or other exhibitions or performances that constitute protected speech under the federal or state constitution and which are not obscene;
2. Classes, seminars and lectures held for serious scientific or educational purposes;
3. Conduct of licensed adult entertainers within adult entertainment dance studios operating pursuant to chapter 5.06 MVMC; or
4. The act of breastfeeding or expressing breast milk.

B. For this chapter, any exhibition, performance, dance or other medium is obscene:
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 patently offensive representations or descriptions of
a. Ultimate sexual acts, normal or perverted, actual or simulated; or

b. Masturbation, fellatio, cunnilingus, bestiality, excretory functions or lewd exhibition of the genitals or genital area; or
c. Violent or destructive sexual acts including but not limited to human or animal mutilation, dismemberment, rape or torture; 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.

5.13.070 Standards of conduct.

The following standards of conduct shall be adhered to by any adult business for which a license is required by this chapter:

A. No person under the age of 18 years shall enter or remain in any establishment or premises in which an employee is in a state of nudity or partial nudity.
B. No employee shall be in a state of partial nudity under circumstances where such conduct is likely to be observed by a member of the public other than a customer.
C. No employee shall be in a state of nudity under circumstances where such conduct is likely to be observed by a member of the public, except that an employee who is employed as an escort or nude house cleaner may be in a state of nudity when observed by a customer.
D. No employee who is employed as an escort or nude house cleaner shall be in a state of nudity when observed by a customer unless the employee is removed at least 6 feet from the nearest customer.
E. No male employee shall be visible to a member of the public with his genitals in a discernibly turgid state, even if completely and opaquely covered.
F. No employee shall caress, fondle or erotically touch any employee or member of the public.
G. No employee shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or member of the public.

5.13.075 Notice to public.

Any business for which an adult business license is required by this chapter shall by signage and other reasonable means put potential customers on notice that the business is an adult business from which persons under the age of 18 years are excluded. Such notice for a business establishment or premises shall include at least one sign conspicuously displayed at each entrance which shall have horizontal and vertical dimensions of least two feet by two feet and state "ADULTS ONLY" in bold letters at least six inches in height.

5.13.080 Prima facie evidence of adult sales practice.

It shall be prima facie evidence of an adult sales practice when a person other than an adult entertainer as defined in MVMC 5.06.020 engages in the retail sale of goods or services while in a state of partial nudity under circumstances where such conduct is likely to be viewed by a member of the public.

5.13.085 Signs.
In addition to any restriction on signs imposed, it shall be unlawful for an adult business for which a license is required by this chapter to display a sign as defined in MVMC 17.87.020 which is obscene, deceptive, misleading, or false, or which proposes a transaction which is illegal.

5.13.090 Enforcement.

The licensing authority, community and economic development director and/or police chief or designated representatives are authorized and directed to enforce the terms and provisions of this chapter.

5.13.095 Nuisance declared.

A. Any adult entertainment business operated, conducted or maintained in violation of this chapter shall be, and the same is declared to be, unlawful and a public nuisance. The county may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action to enjoin, remove or abate such nuisance in the manner provided by law, and may take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult business contrary to the provisions of this chapter.
B. Any adult entertainment business operated, conducted or maintained contrary to the provisions of chapter 7.48A RCW shall be, and the same is declared to be, unlawful and a public and moral nuisance and the prosecuting attorney may, in addition to or in lieu of any other remedies set forth in this chapter, commence an action or actions to enjoin, remove or abate such public and moral nuisance, or impose a civil penalty, in the manner provided by chapter 7.48A RCW.

5.13.100 Additional enforcement.

The remedies provided for in this chapter are not exclusive, and the City may seek any other legal or equitable relief, including but not limited to enjoining any acts or practices which constitute or will constitute a violation of this chapter.

5.13.105 Relation to other laws.

A. This chapter shall not limit application of Chapter 9.19 MVMC and any other laws prohibiting public nudity except as expressly provided therein. Pursuant to MVMC 9.19.040, any public exposure of a person in a state of nudity, other than employees working as escorts or nude house cleaners in adult businesses operating pursuant to this chapter, must be conducted within an adult entertainment dance studio operating pursuant to chapter 5.06 MVMC.

B. This chapter shall not be construed to limit application of other federal, state, and local laws that may apply to adult businesses or employees subject to this chapter, including but not limited to laws relating to public health and workplace safety.

5.13.110 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 4. That a new section 17.72.130 of the Mount Vernon Municipal Code is hereby created which section shall read as follows:

17.72.130 Adult entertainment uses.
Adult entertainment uses must meet the following requirements:

A. Adult entertainment businesses or uses are prohibited within the area circumscribed by a circle which has the radius shown below from any public or private school, preschool, educational institution, church or other religious facility, public or private park, libraries, child care centers, game arcades, youth oriented facilities, and shall be permitted in only the following: Those areas of the C-L Commercial/Limited Industrial District as further set forth in Exhibit A attached hereto:

1. Adult entertainment book stores-- 650'.
2. Adult entertainment dance studios-- 650'.
3. Adult entertainment movie theaters-- 650'.
4. Adult hotels-- 650'.
5. Adult tanning salons-- 650'.
6. Escort businesses-- 0'.
7. Nude house cleaning businesses-- 0'.
8. Panoram premises-- 650'
9. All other adult entertainment uses-- 650';

B. The distances specified in this section shall be measured horizontally by following a straight line without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located to the nearest point of the parcel of property of the land use from which the proposed use is to be separated;

C. Violation of the use provisions of this section is:

1. Declared to be a public nuisance per se, which may be abated by the county by way of civil abatement procedures only, and not by criminal prosecution; or
2. Subject to enforcement in accordance with the provisions of Title 19 MVMC;

D. Nothing in this section is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any other City of Mount Vernon or Skagit County ordinance or statute of the State of Washington or any Federal law regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof; and

E. The following definitions apply to adult entertainment uses:

1. "Adult entertainment" means any exhibition, performance or medium which is distinguished or characterized by:

a. acts of masturbation, sexual intercourse, or sodomy;

b. fondling or other touching of the human genitals, pubic region, buttocks or female breast;

c. human genitals in a state of sexual stimulation or arousal;

d. displays of less than completely and opaquely covered human genitals, pubic region, anus, buttocks, or female breast below the top of the areola;

e. human male genitals in a discernibly turgid state even if completely covered;

f. any exhibition, performance, or dance conducted in a premises where such exhibition, performance, or dance is performed within the view of one or more members of the public and is intended or is likely to sexually stimulate any member of the public; or

g. adult entertainment shall not include the following:

   i. plays, operas, musicals, or other dramatic works which are not obscene;

   ii. classes, seminars, and lectures which are held for serious scientific or educational purposes;

   iii. exhibitions or dances which are not obscene;

h. For this chapter, any exhibition, performance, dance, or other medium is obscene:

   i. which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

   ii. which explicitly depicts or describes patently offensive representations or descriptions, applying contemporary community standards of sexual conduct as described in RCW 7.48A.010(2)(b); and

   iii. which, when considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political, or scientific value.

2. "Adult entertainer" means any person who provides live adult entertainment within an adult entertainment dance studio as defined in this section whether or not a fee is charged or accepted for entertainment.

3. "Adult entertainment book store" means any business from which minors are excluded and in which the purchase, rental, viewing or use of books, magazines, newspapers, movie films, devices, slides, or other photographic or written reproductions distinguished or characterized by their emphasis on matter depicting, describing, or relating to adult entertainment or adult entertainment materials make up 25 percent or more of the stock in trade.

4. "Adult entertainment business/use" means any establishment or premises engaged in the adult sales practices as defined in MVMC 5.13.010 F, or which has a

substantial or significant portion of its trade, the display, barter, rental or sale of any adult entertainment medium, or which meets the definitions contained in this chapter of adult entertainment book stores, adult hotels, adult entertainment movie theaters, adult tanning salons, escort businesses, nude house cleaning businesses, adult entertainment dance studios, panoram premises.

5. Adult entertainment dance studio" means any place where an exhibition or dance of any type is conducted where such exhibition involves adult entertainment as defined by this section.
6. Adult entertainment movie theater" means any establishment, from which minors are excluded and where the principal use of the premises consists of the showing of motion pictures, slides, or photographic or other visual reproductions, where the subject matter meets the criteria of adult entertainment as defined in this chapter and where fees of any kind are charged. This definition shall include establishments where the above mentioned medium is the major attraction on a regular basis and establishments wherein the above mentioned medium is shown at least 25 percent of the showing time of the theater
7. "Adult hotel" means a hotel, motel, or similar commercial establishment which offers a sleeping room for rent for a period of time less than 10 hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.
8. "Adult tanning salon" means any establishment which offers tanning services to a member of the public and in which adult entertainment takes place.
9. “Child Care Centers” means facilities that regularly provide child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.
10. “Church” means buildings or structures, or groups of buildings or structures, which by design, construction or use are primarily intended for the conducting of organized religious services and accessory uses associated therewith.
11. "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
12. "Escort business" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for fee, tip, or other consideration.
13. “Game Arcades” means entertainment venues featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted
14. "Member of the public" means any customer, patron or person, other than an employee, who is invited or admitted to an adult entertainment premises.
15. "Nude or state of nudity" means displays of less than completely and opaquely covered human genitals, pubic area, anus, buttocks, or female breast below the top of the areola.
16. "Nude house cleaning business" means a business which offers house cleaning services in which the house cleaner is in a state of nudity.

17. “Panoram premises" or "adult arcade" means any premises on which any panoram device is located and to which members of the public are admitted. The term "panoram premises" as used in this chapter does not include movie or motion picture theater auditoriums capable of seating more than five people.
18. "Panoram," "preview," "picture arcade," or "peep show" means any device which, for payment of a fee, membership fee or other charge, is used to exhibit or display a picture, view, or other graphic display of adult entertainment. The terms "panoram" and "panoram device" as used in this chapter do not include games which employ pictures, views, or video displays or gambling devices regulated by the state or by chapter 5.14 MVMC.
19. “Parks” means land owned or maintained by a public or private entity opened to the public designated for and used by the public for active and passive recreational activities.
20. “Schools” means any building or part thereof designed, constructed, or used for formal educational uses recognized by the Washington state superintendent of public instruction. This definition includes both public and private schools
21. Stock in trade" means the greater of:

a. the retail dollar value of all prerecorded video tapes, discs, books, magazines, or similar material readily available for purchase, rental, viewing, or use by patrons of the establishment, excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or
b. the total number of titles of all prerecorded video tapes, discs, books, magazines, or similar material readily available for purchase, rental, viewing, or use by patrons of the establishment excluding material located in any storeroom or other portion of the premises not regularly open to patrons.

22. “Trails” means linear shaped facilities designed and intended for the public to walk, run, or otherwise travel across.
23. "Youth oriented facility" means facilities owned or operated by non-profit organizations for the purpose of providing recreational or educational opportunities for youth including, but not limited to, Boys and Girls Clubs, YMCAs, YWCAs, Little League, and other youth sports associations.

F. If any sentence, clause or phrase of this section 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 5. **Repealer**. The following definitions set forth in MVMC 17.06.010 A are hereby repealed:

“Adult bookstore”
“Adult cabaret”
“Adult drive-in theater”
“Adult entertainment”
Adult Entertainment Establishment.
“Adult motion picture theater”

"Adult retail store"
"Adult video store"

SECTION 6. **Repealer.** The following are hereby repealed.

A. Ordinance 3429 as codified in Section MVMC 17.45.030 A 10.
B. Ordinance 3429 as codified in Section MVMC 17.48.020 A 11.
C. Ordinance 3429 as codified in Section MVMC 17.51.040 B

Repeal is limited to only those sections described above. All portions of Ordinance 3429 not identified above shall remain in force and effect.

SECTION 6. **Hearing To Be Held.** Pursuant to RCW 36.70A.390 and/or RCW 35A.63.220, the City Council shall hold a public hearing on this interim regulation within 60 days of adoption of this interim regulations ordinance.

SECTION 7. **City to Consider Permanent Regulations Adoption of City Work Plan.** The City Council hereby directs that the City Community and Economic Development Department to study the issue of adult entertainment uses within the City and begin the process of drafting proposed permanent regulations to be considered through the City's public participation process including allowing for public input and providing for public hearings at both the Planning Commission and City Council. City Council Adopt the following work plan set forth in Exhibit B attached hereto.

SECTION 8. **Severability.** If any section, sentence, clause or phrase of this ordinance 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 ordinance.

SECTION 9. **Savings Clause.** All previous ordinances including Ordinance No. 3536 which may be repealed in part or their entirety by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION 10. **Effective Date and Declaration of Emergency.** The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority plus one of the whole membership of the Council, and that the same is not subject to a referendum. Without an immediate interim regulation on the City's acceptance of business licenses, building applications, permits or other types of land use/development permits/approvals, such applications could become vested under regulations subject to change by the City in this comprehensive review and regulation amendment/adoption process. This Ordinance will not affect any existing rights, or any vested applications previously submitted to the City.

SECTION 11. **Ordinance to be Transmitted to Department**. Pursuant to RCW 36.70A.106, this Interim Ordinance shall be transmitted to the Washington State Department of Commerce as required by law.

PASSED AND ADOPTED by the City Council of the City of Mount Vernon at a regular meeting thereof this 26 th day of October, 2016.

SIGNED AND APPROVED this 26 th 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: _____

Exhibit A
Adult Uses / Businesses Overlay Zone

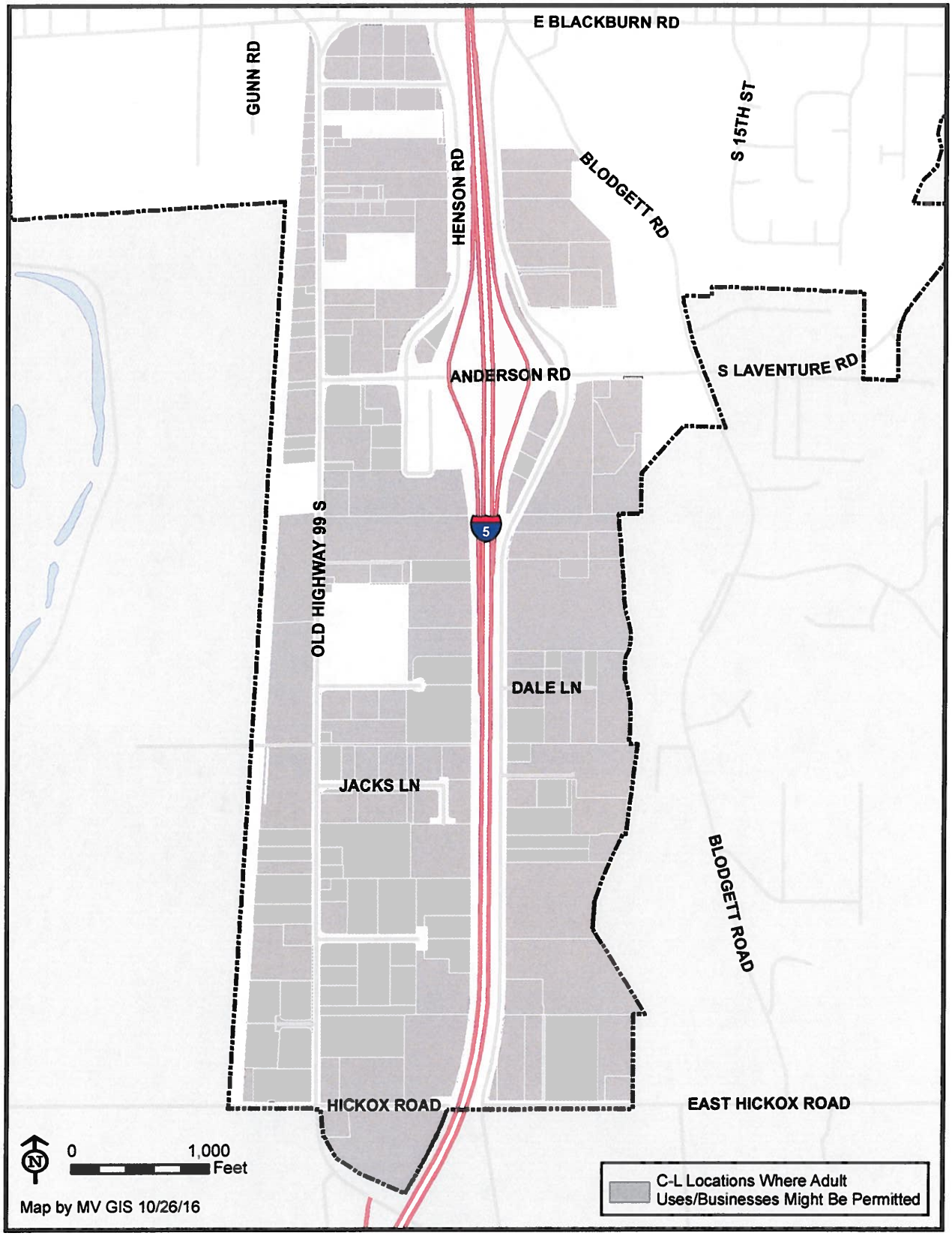

Exhibit B

ADULT ENTERTAINMENT INTERIM REGULATION WORK PLAN

This Adult Entertainment Interim Regulation Work Plan supports the City's Ordinance No. 3698 establishing interim control measures and regulations and licensing and zoning regulations repealing and re-enacting chapter 5.13 of the Mount Vernon Municipal Code, adding a new chapter 5.06 of the Mount Vernon Municipal Code relating to adult business licenses, employees, and adopting regulations amending Mount Vernon Municipal Code Title 17, and declaring an emergency necessitating immediate adoption of interim control regulations to ensure the City Council's intent for appropriate licensing and zoning and other regulations for adult entertainment. This Work Plan is established pursuant to RCW 35A.63.220 and RCW 36.70A.390, as well as interpretative judicial decisions, which authorize adoption of interim zoning controls and regulations with certain limitations, including, if appropriate, a work plan.

Work Plan General Rules and Procedures:

1. All meetings of the Adult Entertainment Zoning and Licensing Committee shall comply with Washington State's Open Public Meetings Act
2. All meetings of the Adult Entertainment Zoning and Licensing Committee shall include a time during the meeting to allow public testimony
3. All meetings of the Adult Entertainment Zoning and Licensing Committee shall substantially comply with Robert Rules of Order
4. Any permanent development regulations and or comprehensive proposed amendments shall comply with the City's public participation program adopted through Resolution 491. In the event of a conflict between Resolution 491 and Ordinance 3698, Ordinance 3698 shall control.
5. For the purposes of Resolution 491, the Council hereby accepts Ordinance 3698 as a proposed amendment for review as a docketed amendment.
6. The Mount Vernon Community and Economic Development Department shall: i) retain all documents reviewed or prepared by the Committee; ii) assign a staff person(s) to provide administrative support; and iii) shall keep minutes.
7. All documents shall be made available to the public at the Community and Economic Development Department during normal business hours.
8. The Adult Entertainment Zoning and Licensing Committee, Planning Commission, or City Council may extend the time schedule set forth below in order if necessary to adequately study materials submitted, obtain new or supplementary information, or provide additional public comment or testimony.

Work Plan Schedule:

November 2016

A minimum of two meetings of the Adult Entertainment Zoning and Licensing Committee.

Tasks shall include:

- Appointing Chairperson and Second (alternative) Chairperson;
- Establish and publish a schedule of meeting days, times, and locations for meetings.
- Review of City's Interim Regulations adopted by Ordinance 3698;
- Review of City's Legislative Record including all Secondary Effects evidence and testimony;
- Acceptance of public testimony; and
- Acceptance and review of additional testimony by City Staff and the public.

December 2016

A minimum of two meetings of the Adult Entertainment Zoning and Licensing Committee

Tasks shall include:

- Review of proposed drafts of the plans or ordinances;
- One joint meeting with the City's Planning Commission;
- Presentation of additional information in response to the Committee's requests, public testimony, or suggestions by the City's Planning Commission; and
- Make a recommendation together with findings to the City's Planning Commission.

January 2017 – February 2017

Public Review, Comment and Hearing of the Planning Commission.

- The Mount Vernon Planning Commission shall review all proposed amendments or adopt new plans and/or implementing regulations, and make recommendation to the City Council together with any SEPA analysis.
- The Planning Commission shall hold at least one public hearing and additional hearings if needed.
- The Planning Commission will make a recommendation, together with findings, to the City Council unless it is unable to reach a decision on a recommendation.

March 2017

- City Council review and consideration of Planning Commission recommendation after public notice and public comment required pursuant to Resolution 491.

The Mount Vernon City Council adopted Ordinance 3698 on October 26, 2016. An Ordinance of the City of Mount Vernon, Washington, enacting interim licensing and zoning regulations repealing and re-enacting Chapter 5.13 of the Mount Vernon Municipal Code, adding a new Chapter 5.06 of the Mount Vernon Municipal Code relating to adult business licenses, employees, and adopting regulations amending Mount Vernon Municipal Code Title 17; and declaring an emergency necessitating immediate adoption of interim control regulations for the zoning, licensing and regulation of adult entertainment. 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