

ADULT ENTERTAINMENT ADVISORY COMMITTEE AGENDA

Kick Off Meeting

November 29, 2016

5:15 PM – 6:15 PM

City Hall - 910 Cleveland Ave

Downstairs Conference Room

5:15 – 5:35

INTRODUCTION

Committee/Staff Introductions

Why are we here?

General Rules/Procedures:

- Committee subject to Open Public Meetings Act
- Roberts Rules of Order
- Appoint Chairperson and Second (alternative) Chairperson
- Scheduling Future Meetings

5:35 – 5:50

REGULATION OF ADULT ENTERTAINMENT/USES

Overview by Kevin Rogerson, City Attorney

Review of Ordinance 3698

5:50 – 6:05

PLANNING STUDY

Overview by Rebecca Lowell

6:05 – 6:15

PUBLIC COMMENTS

Public comment or testimony to be taken should anyone wish to attend and provide such comment or testimony

6:15

ADJOURN

ATTACHED:

- Portions of: The Open Public Meetings Act, MRSC, June 2016
- Introduction to Roberts Rules of Order
- Ordinance 3698
- Planning Study Narrative

The Open Public Meetings Act

How it Applies to Washington Cities, Counties,
and Special Purpose Districts

The Open Public Meetings Act

Copyright © 2016 by MRSC. All rights reserved. Except as permitted under the Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means or stored in a database or retrieval system without the prior written permission of the publisher; however, governmental entities in the state of Washington are granted permission to reproduce and distribute this publication for official use.

MRSC
2601 4th Avenue, Suite 800
Seattle, WA 98121-1280
(206) 625-1300
(800) 933-6772

www.MRSC.org

June 2016
\$30

Contents

1	Introduction
3	Who Is Subject to the Act?
6	What Is a “Meeting”?
9	What Procedural Requirements Apply to Meetings?
16	When May a Governing Body Hold an Executive Session?
26	What Meetings Are Exempt from the Act?
28	What Are the Penalties for Violating the Act?
30	What Training is Required by the Act?
31	Selected Cases and Attorney General Opinions

Foreword

This is the second revision of our original September 1997 publication on the Open Public Meetings Act. Issues involving public meetings of governing bodies of cities, towns, counties, and special purpose districts continue to figure prominently in inquiries to MRSC legal consultants. This publication is intended for use by city, town, county, and special purpose district officials and is intended to provide general guidance in understanding the policies and principles underlying this important law.

Special acknowledgment is given to Bob Meinig, Legal Consultant, who prepared this publication. Thanks are also due to Pam James, Legal Consultant, for her editing, and to Holly Stewart, Desktop Publishing Specialist, for designing the publication.

Introduction

In 1971, the state legislature enacted the Open Public Meetings Act (the “Act”) to make the conduct of government more accessible and open to the public. The Act begins with a strongly worded statement of purpose:¹

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.²

Codified in chapter 42.30 RCW, the Act applies to all city and town councils,³ to all county councils and boards of county commissioners, and to the governing bodies of special purpose districts, as well as to many subordinate city, county, and special purpose district commissions, boards, and committees. It requires, basically, that all “meetings” of such bodies be open to the public and that all “action” taken by such bodies be done at meetings that are open to the public. The terms “meetings” and “action” are defined broadly in the Act and, consequently, the Act can have daily significance for cities, counties, and special purpose districts even when no formal meetings are being conducted.

¹RCW 42.30.010.

²Throughout this publication, indented quotations in italics are statutory language.

³For convenience, the term “city council” will in this publication also refer to town councils and to city commissions under the commission form of government. There is currently only one city in the state, Shelton, that is governed by the commission form of government.

This publication comprehensively reviews the Act as it applies to Washington cities, towns, counties, and special purpose districts.⁴ It also provides answers to selected questions that have been asked of MRSC staff concerning application of the Act. However, we find that new questions constantly arise concerning the Act. So, if you have questions that are not addressed by this publication, do not hesitate to contact your legal counsel or MRSC legal staff.

⁴There is no single uniform definition of a special purpose district in state law. In general, a special purpose district is any unit of local government other than a city, town, or county that is authorized by law to perform a single function or a limited number of functions, such as water-sewer districts, irrigation districts, fire districts, school districts, port districts, hospital districts, park and recreation districts, transportation districts, diking and drainage districts, flood control districts, weed districts, mosquito control districts, metropolitan municipal corporations, etc.

Who Is Subject to the Act?

The basic mandate of the Open Public Meetings Act is as follows:

*All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.*⁵

The Act applies to “meetings” of a “governing body” of a “public agency.” A “public agency” includes a city, county, and special purpose district.⁶ A “governing body” is defined in the Act as follows:

“Governing body” means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

The legislative bodies of cities and counties⁷ clearly are governing bodies under this definition, as are the boards or commissions that govern special purpose districts. However, they are not the only governing bodies to which the Act applies. The Act also applies to any “subagency” of a city, county, or special purpose district,⁸ because the definition of “public agency” includes:

*Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies.*⁹

Under this definition, the subagency must be created by some legislative act of the governing body, such as an ordinance or resolution. A group established by a mayor to advise him or her

⁵RCW 42.30.030.

⁶RCW 42.30.020(1)(b).

⁷The legislative bodies of cities are the city councils or city commissions, and the legislative bodies of counties are the boards of county commissioners or county councils.

⁸Most special purpose district governing bodies do not have the authority to create such subagencies.

⁹RCW 42.30.020(1)(c).

could not, for example, be a subagency, because a mayor does not act legislatively. However, a legislative act alone does not create a subagency. According to the attorney general's office, a board or a commission or other body is not a subagency governed by the Act

unless it possesses some aspect of policy or rulemaking authority. In other words, its “advice,” while not binding upon the agency with which it relates . . . , must nevertheless be legally a necessary antecedent to that agency's action.¹⁰

If a board or commission (or whatever it may be termed) established by legislative action is merely advisory and its advice is not necessary for the city, county, or district to act, the Act generally does not apply to it.

Given the above definitions, the following are governing bodies within city and county government that *are subject* to the Act:

- City council or commission
- County council or board of commissioners
- Planning commission
- Civil service commission
- Board of adjustment

Other boards or commissions will need to be evaluated individually to determine whether the Act applies to them. For example, the definition of a subagency identifies library boards, but, in some cities (particularly those without their own libraries), library boards function as purely advisory bodies, without any policymaking or rulemaking authority. That type of a library board would not be subject to the Act. In cities where library boards function under statutory authority¹¹ and possess policymaking and rulemaking authority, those boards must follow the requirements of the Act.

Most special purpose districts have only one “governing body” under the meaning of that term in the Act.

In some circumstances, the Act applies to a committee of a governing body. As a practical matter, city or county legislative bodies are usually the only governing bodies with committees to which the Act may apply. A committee of a city or county legislative body will be subject to the Act in the following circumstances:

¹⁰AGO 1971 No. 33, at 9. The attorney general's office bases its conclusion on this issue on the language "or other policy or rulemaking body of a public agency" in the definition of "governing body" in RCW 42.30.020(2), quoted above. See also AGLO 1972 No. 48.

¹¹RCW 27.12.210.

- when it acts on behalf of the legislative body¹²
- when it conducts hearings, or
- when it takes testimony or public comment.

When a committee is not doing any of the above, it is not subject to the Act.¹³

Keep in mind that it is usually good public policy to open the meetings of city, county, and special district governing bodies to the public, even if it is uncertain or doubtful that the Act applies to them. Secrecy is rarely warranted, and the Act's procedural requirements are not onerous. This approach would be consistent with the Act's basic intent that the actions of governmental bodies “be taken openly and that their deliberations be conducted openly.”¹⁴

Further Questions

May four councilmembers-elect of a seven-member council meet before taking their oaths of office without procedurally complying with the Act?

Yes. Councilmembers-elect are not yet members of the governing body and cannot take “action” within the meaning of the Act, and so they are not subject to the Act.¹⁵

Must a committee of the governing body be composed solely of members of the governing body for it to be subject to the Act under the circumstances identified in RCW 42.30.020(2)?

This statute defines a “governing body” to include a “committee thereof” when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” (Emphasis added.) Does a “committee thereof” include only members of the governing body? The state supreme court has held that a “committee thereof,” an entity created or specifically authorized by the governing body, may include or consist of individuals who are not members of the governing body.¹⁶

¹²In a 2015 decision, the state supreme court adopted the reasoning of AGO 1986 No. 16 in concluding that a committee acts on behalf of the governing body “when it exercises actual or de facto decision making authority.” *Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015). A committee when it is exercising actual or de facto decision making authority should be distinguished from the situation where a committee simply provides advice or information to the governing body and is not subject to the OPMA. *Id.*

¹³While the definition of “governing body” speaks of “when” a committee acts so as to come within that definition, the courts have not been clear about whether a committee is subject to the Act for all of its meetings when it is only at some that it is acting in that manner. See *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001).

¹⁴RCW 42.30.010.

¹⁵*Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 561 (2001).

¹⁶*Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015).

What Is a “Meeting”?

There must be a “meeting” of a governing body for the Act to apply. Sometimes it is very clear that a “meeting” must be open to the public, but other times it isn't. To determine whether a governing body is having a “meeting” that must be open, it is necessary to look at the Act's definitions. The Act defines “meeting” as follows: “‘Meeting’ means meetings at which action is taken.”¹⁷ “Action,” as referred to in that definition of “meeting,” is defined as follows:

*“Action” means the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. “Final action” means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.*¹⁸

Since a governing body can transact business when a quorum (majority) of its members are present,¹⁹ it is conducting a meeting subject to the requirements of the Open Public Meetings Act whenever a majority of its members gathers with the collective intent of transacting the governing body's business.²⁰ This includes simply discussing some matter having to do with agency business. Because members of a governing body may discuss the business of that body by telephone or e-mail, it is not necessary that the members be in the physical presence of each other for there to be a meeting subject to the Act.²¹ See the “Further Questions” at the end of this section. Also, it is not necessary that a governing body take “final action”²² for a meeting subject to the Act to occur.

Note that it does not matter if the meeting is called a “workshop,” a “study session,” or a “retreat”; it is still a meeting subject to the Open Public Meetings Act if a quorum is addressing the business of the city, county, or special purpose district. If a governing body just meets

¹⁷RCW 42.30.020(4).

¹⁸RCW 42.30.020(3).

¹⁹See, e.g., RCW 35A.12.120; 35.23.270; 35.27.280; 36.32.010.

²⁰*Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015).

²¹*Id.*; *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 562 (2001).

²²RCW 42.30.020(3) defines “final action” as “a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.”

socially or travels together, it is not having a meeting subject to the Act as long as the members do not discuss agency business or otherwise take “action.”²³

Further Questions

If a majority or more of the members of a governing body discuss city, county, or district business by telephone or e-mail, are they having a meeting subject to the Act?

Since the members of a governing body can discuss city, county, or district business together by telephone or by e-mail so as to be taking “action” within the above definition, the governing body can conduct a meeting subject to the Act even when the members are not in the physical presence of one another²⁴ This type of meeting could take many forms, such as a conference call among a majority or more of the governing body, a telephone “tree” involving a series of telephone calls, or an exchange of e-mails. Since the public could not, as a practical matter, attend this type of “meeting,” it would be held in violation of the Act.²⁵

Given the increasingly prevalent use of e-mail and the nature of that technology, members of city councils, boards of county commissioners, and special district governing bodies must be careful when communicating with each other by e-mail so as not to violate the Act. However, such bodies will not be considered to be holding a meeting if one member e-mails the other members merely for the purpose of providing relevant information to them. As long as the other members only “passively receive” the information and a discussion regarding that information is not then commenced by e-mail amongst a quorum, there is no Open Public Meetings Act issue.²⁶

May one or more members of a governing body “attend” a meeting by telephone?

Although no courts in this state have addressed this question, it probably would be permissible for a member of a governing body to “attend” a meeting by telephone, with the permission of the body, *if* that member's voice could be heard by all present, including the public, and if that member could hear all that is stated at the meeting. Some sort of speaker phone equipment would be necessary for this to occur. If a governing body decides

²³RCW 42.30.070; *In re Recall of Roberts*, 115 Wn.2d 551, 554 (1990).

²⁴*Citizens Alliance v. San Juan County*, ___ Wn.2d ___ (2015); *Wood v. Battle Ground School Dist.*, 107 Wn. App. 550, 562-63 (2001).

²⁵Though, at least one local government in this state has held an online meeting of its governing body, providing notice under the Act and giving the public the opportunity to “attend.”

²⁶*Id.*

to allow participation by telephone, it is advisable to authorize such in its rules, including under what circumstances it will be allowed.

May a quorum of a city or county legislative body attend, as members of the audience, a citizens' group meeting?

Yes, provided that the members attending the meeting do not discuss, as a group, city or county or district business, as the case may be, or otherwise take "action" within the meaning of the Act.²⁷ That possibility could in most circumstances be avoided by not sitting as a group.

May an entire county council attend a private dinner in honor of the out-going county official without complying with the Open Public Meetings Act?

Again, the issue comes down to whether the council will be dealing with county business. It can be argued that honoring the county official is itself county business. On the other hand, it could be argued that honoring an individual who is leaving county employment does not involve the functioning of the county. This is a gray area where caution should be exercised.

Must the public be allowed to attend the annual city council retreat?

Yes. A retreat attended by a quorum of the council where issues of city business are addressed constitutes a meeting.

²⁷See AGO 2006 No. 6.

What Procedural Requirements Apply to Meetings?

The Act establishes some basic procedural requirements that apply to all meetings of a governing body, whether they are regular or special meetings. *All meetings of a governing body are, under the Open Public Meetings Act, either regular or special meetings.* It does not matter if it is called a “study session” or a “workshop” or a “retreat,” it is either a regular or special meeting.

What is a regular meeting?

A regular meeting is one that is held according to a schedule adopted by ordinance, resolution, order, or rule, as may be appropriate for the governing body.²⁸

What is a special meeting?

A special meeting is any meeting that is not a regular meeting. In other words, special meetings are not held according to a fixed schedule. Under the Act, special meetings have specific notice requirements, as discussed below. Also, governing bodies may be subject to specific limitations about what may be done at a special meeting.²⁹

What procedural requirements apply to all meetings of a governing body?

The following requirements and prohibitions apply to both regular and special meetings of a governing body:

²⁸See RCW 42.30.060, .070, .080. Also, state law, though not the Open Public Meetings Act, may require the governing body of a city, county, or special district to meet with a certain regularity, such as monthly. For example, second class and code city councils, town councils, and the board of directors of any school district must meet at least once a month. RCW 35.23.181; RCW 35.27.270; RCW 35A.12.110; RCW 28A.343.380.

²⁹For example, second class city councils may not pass an ordinance or approve a contract or a bill for the payment of money at a special meeting. RCW 35.23.181. Town councils may not pass a resolution or order for the payment of money at a special meeting. RCW 35.27.270. Many special purpose districts are subject to requirements that certain actions can be taken only at a regular meeting, i.e., not at a special meeting. See, e.g., RCW 54.16.100 (appointment and removal of public utility district manager); RCW 85.05.410 (setting compensation of board of diking district commissioners). The councils of first class and code cities and county legislative bodies have no specific limitations on actions that may be taken at a special meeting, other than those imposed by the Open Public Meetings Act.

- All meetings must be open to the public.³⁰
- A member of the public may not be required as a condition of attendance to register his or her name or other information, or complete a questionnaire, or be required to fulfill any other condition to be allowed to attend.³¹
- The governing body may require the removal of members of the public who disrupt the orderly conduct of a meeting. If order cannot be restored by removal of individuals, the governing body may order the meeting room cleared and may continue in session or it may adjourn and reconvene the meeting at another location, subject to the limitations in RCW 42.30.050.³²
- Votes may not be taken by secret ballot.³³
- Meetings may be adjourned or continued subject to the procedures in RCW 42.30.090, as discussed below.
- The governing body may meet in executive (closed) session, but only for one of the reasons specified in and in accordance with the procedures identified in RCW 42.30.110. See discussion on executive sessions.

Although the Act gives the public the right to attend meetings, the public has no statutory right to speak at meetings. However, as a practical and policy matter, city, county, and special district governing bodies generally provide the public some opportunity to speak at meetings.

The Open Public Meetings Act does not require that a city or county legislative body or special district governing body hold its meetings within the city or in a particular place in the county or district. However, other statutes provide that the councils of code cities, second class cities, and towns may take final actions on ordinances and resolutions only at a meeting within the city or town.³⁴ Also, county legislative bodies must hold their regular meetings at the county seat,³⁵ but

³⁰RCW 42.30.030.

³¹RCW 42.30.040.

³²That statute provides in relevant part as follows

In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting.

³³RCW 42.30.060(2). Any vote taken by secret ballot is null and void.

³⁴RCW 35.23.181; 35.27.270; 35A.12.110. Although meetings need not necessarily be held within a city, when a governing body decides to hold one outside the city, it should not site the meeting at a place so far from the city as to effectively prevent the public from attending.

³⁵RCW 36.32.080.

may hold special meetings in the county outside of the county seat if there are agenda items that “are of unique interest or concern” to the residents of the area of the county in which the meetings are held.³⁶ Some special purpose district governing bodies, such as first class school district boards of directors,³⁷ are specifically required to hold their regular meetings within the district, while others, such as irrigation districts,³⁸ are specifically required to hold meetings in the county where the district is located. Where the statutes are silent as to where meetings must be held for a particular type of district, they should be held, if possible, within the district or, at the very least, within the county in which the district is located.

What procedural requirements apply specifically to regular meetings?

- The date and time of regular meetings must be established by ordinance, resolution, order, or rule, as may be required for the particular governing body.³⁹
- If the regular meeting date falls on a holiday, the meeting must be held on the next business day.⁴⁰
- The meeting agenda must be made available online at least 24 hours in advance of the regular meeting.⁴¹ This requirement does not apply if the city, county, or district does not have a website or if it employs fewer than 10 full-time equivalent employees.

What procedural requirements apply specifically to special meetings?

The procedural requirements that apply to special meetings deal primarily with the notice that must be provided. These requirements, contained in RCW 42.30.080, are as follows:

³⁶RCW 36.32.090.

³⁷RCW 28A.330.070.

³⁸RCW 87.03.115.

³⁹The Act does not directly address designating (in the ordinance, resolution, order, or rule designating the date and time of regular meetings) the place at which regular meetings will be held. RCW 42.30.070. However, the statutes governing the particular classes of cities, except those governing first class cities, require designation of the site of regular council meetings. RCW 35A.12.110; 35.23.181; 35.27.270. The county statutes and those relating to special purpose districts do not address designating the site of regular meetings. However, counties, first class cities, and special purpose districts should, of course, also designate the site of regular meetings along with the designation of the date and time of those meetings.

⁴⁰RCW 42.30.070.

⁴¹Laws of 2014, ch. 61, § 2. This requirement does not mean that the agenda cannot be modified after it is posted online. Also, a failure to comply with this requirement with respect to a meeting will not invalidate an otherwise legal action taken at the meeting.

- A special meeting may be called by the presiding officer or by a majority of the members of the governing body.⁴²
- Written notice must be delivered personally, by mail, by fax, or by e-mail at least 24 hours before the time of the special meeting to:
 - each member of the governing body, and to
 - each local newspaper of general circulation and each local radio or television station that has on file with the governing body a written request to be notified of that special meeting or of all special meetings.⁴³
- Notice of the special meeting must be provided to the public as follows:
 - “prominently displayed” at the main entrance of the agency’s principal location, and at the meeting site if the meeting will not held at the agency’s principal location; and
 - posted on the agency’s web site. Web site posting is not required if the agency:
 - does not have a web site;
 - has fewer than 10 full-time equivalent employees; or
 - does not employ personnel whose job it is to maintain or update the web site.
- The notice must specify:
 - the time and place of the special meeting, and
 - the business to be transacted at the special meeting.

⁴²There is a conflict between the provision in RCW 42.30.080 authorizing a majority of the members of a governing body to call a special meeting and the provision for code cities in RCW 35A.12.110 authorizing three members of the city council to call a special meeting. This conflict occurs only with respect to a code city with a seven-member council, because three members is less than a majority. Since RCW 42.30.140 provides that the provisions of the Act will control in case of a conflict between it and another statute, four members of a seven-member code city council, not three, are needed to call a special meeting.

⁴³Note also that statutes relating to each class of city require that cities

establish a procedure for notifying the public of upcoming hearings and the preliminary agenda for the forthcoming council meeting. Such procedure may include, but not be limited to, written notification to the city's official newspaper, publication of a notice in the official newspaper, posting of upcoming council meeting agendas, or such other processes as the city determines will satisfy the intent of this requirement.

RCW 35A.12.160; 35.22.288; 35.23.221; 35.27.300. There are no similar statutes that apply to counties or special purpose districts. Nevertheless, we recommend that counties and special districts establish like procedures for notifying the public.

- The governing body may take final action *only* concerning matters identified in the notice of the meeting.⁴⁴
- Written notice to a member or members of the governing body is not required when:
 - a member files at or prior to the meeting a written waiver of notice or provides a waiver by telegram, fax, or e-mail; or
 - the member is present at the meeting at the time it convenes.
- Special meeting notice requirements may be dispensed with when a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when the time requirements of the notice would make notice impractical and increase the likelihood of such injury or damage.⁴⁵ An emergency meeting must, nevertheless, be open to the public.⁴⁶

What procedural requirements apply to adjournments of regular or special meetings?

A regular or special meeting may be adjourned to a specified time and place, where it will be continued. There are a number of circumstances under which a meeting might be adjourned. A meeting may be adjourned and continued to a later date because the governing body did not complete its business. The Act, in RCW 42.30.090, addresses two other circumstances under which a meeting may be adjourned and continued at a later date:

- When the governing body does not achieve a quorum. In that circumstance, less than a quorum may adjourn a meeting to a specified time and place; or
- When all members are absent from a *regular meeting* or an *adjourned regular meeting*. In that instance, the clerk of the governing body may adjourn the meeting to a stated time and place, with notice provided as required for a special meeting, unless notice is waived as provided for special meetings. However, the resulting meeting is still considered a regular meeting.

Notice of an adjourned meeting is to be provided as follows:

- An order or notice of adjournment, specifying the time and place of the meeting to be continued, must be “conspicuously posted” immediately following adjournment on or

⁴⁴This does not prevent a governing body from discussing or otherwise taking less than final action with respect to a matter not identified in the notice.

⁴⁵The type of emergency contemplated here is a severe one that “involves or threatens physical damage” and requires urgent or immediate action. *Mead Sch. Dist. No. 354 v. Mead Educ. Ass’n*, 85 Wn.2d 140, 144-45 (1975).

⁴⁶*Teaford v. Howard*, 104 Wn.2d 580, 593 (1985)

near the door of the place where the meeting was held.

- Notice of a regular meeting adjourned by the clerk when all members of the governing body are absent must be provided in the same manner as for special meetings.
- If the notice or order of an adjourned meeting fails to state the hour at which the adjourned meeting is to be held, it must be held at the hour specified for regular meetings by ordinance, resolution, or other rule.

If the governing body is holding a hearing, the hearing may be continued at a later date by following the same procedures for adjournment of meetings.⁴⁷

Further Questions

Must a city, county, or special purpose district provide published notice of a special meeting?

No, not under the Open Public Meetings Act. While notice must be provided to media that have on file a request to be notified of special meetings, this is not equivalent to a publishing requirement. Of course, if the governing body has adopted a requirement of published notice for special meetings, that requirement must be followed.

May notice to the media of a special meeting be provided by fax or e-mail?

Yes. Legislation passed in 2005 amended RCW 42.30.080 to allow notice by fax or e-mail.

May a governing body prohibit a member of the public from tape recording or videotaping a meeting?

No, there is no legal basis for prohibiting the audio or videotaping of a meeting, unless the taping disrupts the meeting. If the governing body enacted such a rule, it essentially would be conditioning attendance at a meeting on not recording the meeting. This would be contrary to RCW 42.30.040, which prohibits a governing body from imposing any condition on attending a public meeting.⁴⁸

⁴⁷RCW 42.30.100.

⁴⁸See AGO 1998 No. 15.

ROBERT'S RULES OF ORDER - SUMMARY VERSION

INTRODUCTION TO ROBERT'S RULES OF ORDER

(Taken from: <http://www.robertsrules.org/>)

What Is Parliamentary Procedure?

It is a set of rules for conduct at meetings that allows everyone to be heard and to make decisions without confusion.

Why is Parliamentary Procedure Important?

Because it's a time tested method of conducting business at meetings and public gatherings. It can be adapted to fit the needs of any organization. Today, Robert's Rules of Order newly revised is the basic handbook of operation for most clubs, organizations and other groups. So it's important that everyone know these basic rules!

Organizations using parliamentary procedure usually follow a fixed order of business. Below is a typical example:

1. Call to order.
2. Roll call of members present.
3. Reading of minutes of last meeting.
4. Officer's reports.
5. Committee reports.
6. Special orders --- Important business previously designated for consideration at this meeting.
7. Unfinished business.
8. New business.
9. Announcements.
10. Adjournment.

The method used by members to express themselves is in the form of moving motions. A motion is a proposal that the entire membership take action or a stand on an issue. Individual members can:

1. Call to order.
2. Second motions.
3. Debate motions.
4. Vote on motions.

How are Motions Presented?

1. Obtaining the floor
 - a. Wait until the last speaker has finished.
 - b. Rise and address the Chairman by saying, "Mr. Chairman, or Mr. President."
 - c. Wait until the Chairman recognizes you.
2. Make Your Motion
 - d. Speak in a clear and concise manner.
 - e. Always state a motion affirmatively. Say, "I move that we ..." rather than, "I move that we do not ..."
 - f. Avoid personalities and stay on your subject.
3. Wait for Someone to Second Your Motion
4. Another member will second your motion or the Chairman will call for a second.
5. If there is no second to your motion it is lost.

6. The Chairman States Your Motion
 - a. The Chairman will say, "it has been moved and seconded that we ..." Thus placing your motion before the membership for consideration and action.
 - b. The membership then either debates your motion, or may move directly to a vote.
 - c. Once your motion is presented to the membership by the chairman it becomes "assembly property", and cannot be changed by you without the consent of the members.
7. Expanding on Your Motion
 - a. The time for you to speak in favor of your motion is at this point in time, rather than at the time you present it.
 - b. The mover is always allowed to speak first.
 - c. All comments and debate must be directed to the chairman.
 - d. Keep to the time limit for speaking that has been established.
 - e. The mover may speak again only after other speakers are finished, unless called upon by the Chairman.
8. Putting the Question to the Membership
 - a. The Chairman asks, "Are you ready to vote on the question?"
 - b. If there is no more discussion, a vote is taken.
 - c. On a motion to move the previous question may be adapted. Voting on a Motion:

The method of vote on any motion depends on the situation and the by-laws of policy of your organization. There are five methods used to vote by most organizations, they are:

1. By Voice -- The Chairman asks those in favor to say, "aye", those opposed to say "no". Any member may move for a exact count.
2. By Roll Call -- Each member answers "yes" or "no" as his name is called. This method is used when a record of each person's vote is required.
3. By General Consent -- When a motion is not likely to be opposed, the Chairman says, "if there is no objection ..." The membership shows agreement by their silence, however if one member says, "I object," the item must be put to a vote.
4. By Division -- This is a slight verification of a voice vote. It does not require a count unless the chairman so desires. Members raise their hands or stand.
5. By Ballot -- Members write their vote on a slip of paper, this method is used when secrecy is desired.

There are two other motions that are commonly used that relate to voting.

1. Motion to Table -- This motion is often used in the attempt to "kill" a motion. The option is always present, however, to "take from the table", for reconsideration by the membership.
2. Motion to Postpone Indefinitely -- This is often used as a means of parliamentary strategy and allows opponents of motion to test their strength without an actual vote being taken. Also, debate is once again open on the main motion.

Parliamentary Procedure is the best way to get things done at your meetings. But, it will only work if you use it properly.

1. Allow motions that are in order.
2. Have members obtain the floor properly.
3. Speak clearly and concisely.
4. Obey the rules of debate.

Most importantly, *BE COURTEOUS*.

For Fair and Orderly Meetings & Conventions

Provides common rules and procedures for deliberation and debate in order to place the whole membership on the same footing and speaking the same language. The conduct of ALL business is controlled by the general will of the whole membership - the right of the deliberate majority to decide. Complementary is the right of at least a strong minority to require the majority to be deliberate - to act according to its considered judgment AFTER a full and fair "working through" of the issues involved. Robert's Rules provides for constructive and democratic meetings, to help, not hinder, the business of the assembly. Under no circumstances should "undue strictness" be allowed to intimidate members or limit full participation.

The fundamental right of deliberative assemblies requires all questions to be thoroughly discussed before taking action!

The assembly rules - they have the final say on everything! Silence means consent!

- Obtain the floor (the right to speak) by being the first to stand when the person speaking has finished; state Mr/Madam Chairman. Raising your hand means nothing, and standing while another has the floor is out of order! Must be recognized by the Chair before speaking!
- Debate cannot begin until the Chair has stated the motion or resolution and asked "are you ready for the question?" If no one rises, the chair calls for the vote!
- Before the motion is stated by the Chair (the question) members may suggest modification of the motion; the mover can modify as he pleases, or even withdraw the motion without consent of the seconder; if mover modifies, the seconder can withdraw the second.
- The "immediately pending question" is the last question stated by the Chair! Motion/Resolution - Amendment - Motion to Postpone
- The member moving the "immediately pending question" is entitled to preference to the floor!
- No member can speak twice to the same issue until everyone else wishing to speak has spoken to it once!
- All remarks must be directed to the Chair. Remarks must be courteous in language and deportment - avoid all personalities, never allude to others by name or to motives!
- The agenda and all committee reports are merely recommendations! When presented to the assembly and the question is stated, debate begins and changes occur!

THE RULES

- **Point of Privilege:** Pertains to noise, personal comfort, etc. - may interrupt only if necessary!
- **Parliamentary Inquiry:** Inquire as to the correct motion - to accomplish a desired result, or raise a point of order
- **Point of Information:** Generally applies to information desired from the speaker: "I should like to ask the (speaker) a question."
- **Orders of the Day (Agenda):** A call to adhere to the agenda (a deviation from the agenda requires Suspending the Rules)
- **Point of Order:** Infraction of the rules, or improper decorum in speaking. Must be raised immediately after the error is made
- **Main Motion:** Brings new business (the next item on the agenda) before the assembly
- **Divide the Question:** Divides a motion into two or more separate motions (must be able to stand on their own)
- **Consider by Paragraph:** Adoption of paper is held until all paragraphs are debated and amended and entire paper is satisfactory; after all paragraphs are considered, the entire paper is then open to amendment, and paragraphs may be further amended. Any Preamble cannot be considered until debate on the body of the paper has ceased.

- **Amend:** Inserting or striking out words or paragraphs, or substituting whole paragraphs or resolutions
- **Withdraw/Modify Motion:** Applies only after question is stated; mover can accept an amendment without obtaining the floor
- **Commit /Refer/Recommit to Committee:** State the committee to receive the question or resolution; if no committee exists includes size of committee desired and method of selecting the members (election or appointment).
- **Extend Debate:** Applies only to the immediately pending question; extends until a certain time or for a certain period of time
- **Limit Debate:** Closing debate at a certain time, or limiting to a certain period of time
- **Postpone to a Certain Time:** State the time the motion or agenda item will be resumed
- **Object to Consideration:** Objection must be stated before discussion or another motion is stated
- **Lay on the Table:** Temporarily suspends further consideration/action on pending question; may be made after motion to close debate has carried or is pending
- **Take from the Table:** Resumes consideration of item previously "laid on the table" - state the motion to take from the table
- **Reconsider:** Can be made only by one on the prevailing side who has changed position or view
- **Postpone Indefinitely:** Kills the question/resolution for this session - exception: the motion to reconsider can be made this session
- **Previous Question:** Closes debate if successful - may be moved to "**Close Debate**" if preferred
- **Informal Consideration:** Move that the assembly go into "**Committee of the Whole**" - informal debate as if in committee; this committee may limit number or length of speeches or close debate by other means by a 2/3 vote. All votes, however, are formal.
- **Appeal Decision of the Chair:** Appeal for the assembly to decide - must be made before other business is resumed; NOT debatable if relates to decorum, violation of rules or order of business
- **Suspend the Rules:** Allows a violation of the assembly's own rules (except Constitution); the object of the suspension must be specified

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 25 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

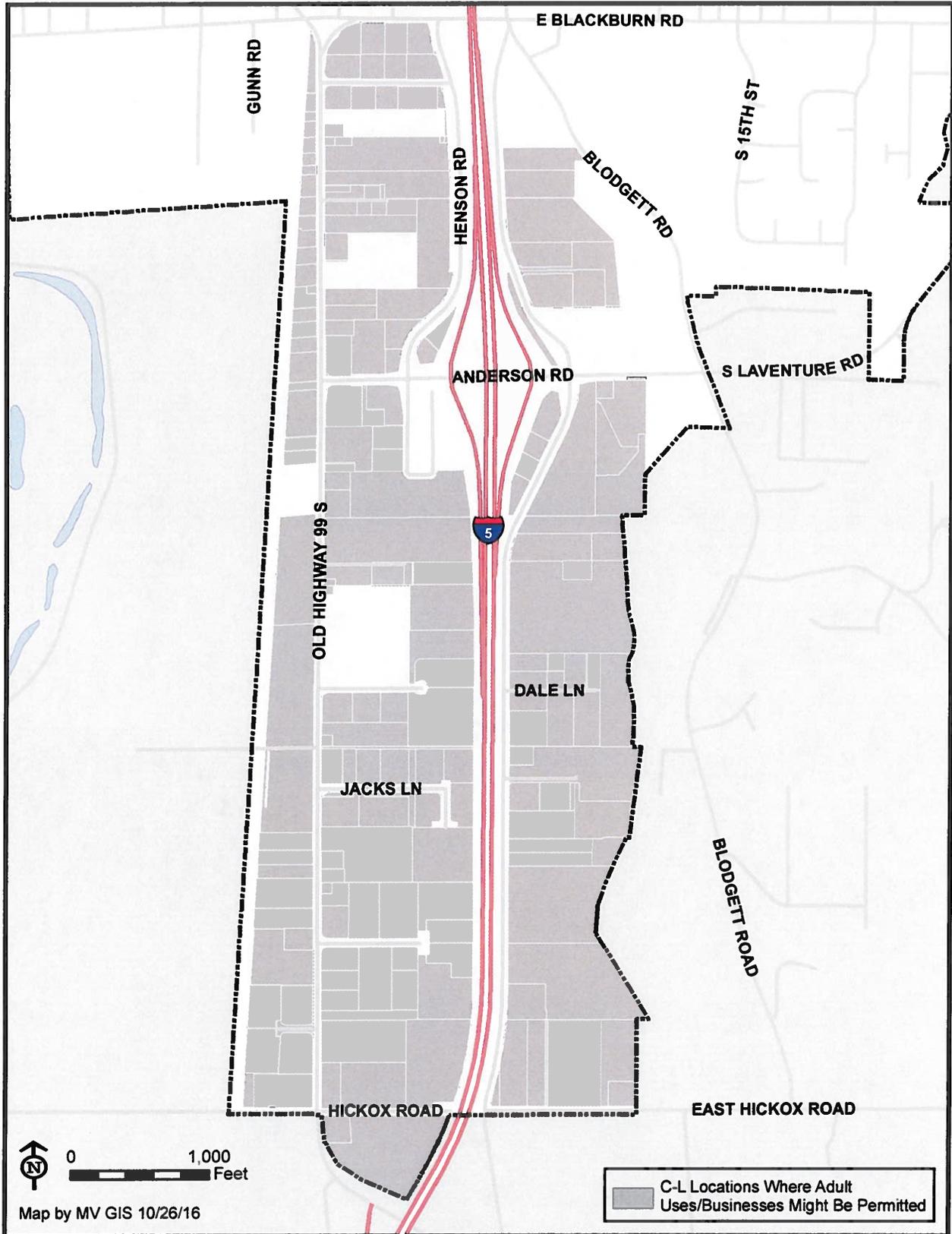
Approved as to Form:



Kevin Rogerson, City Attorney

Date of Publication: Oct 30, 2016
Effective Date: _____

Exhibit A
Adult Uses / Businesses Overlay Zone



Map by MV GIS 10/26/16

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



DATE: October 26, 2016

TO: City Council, Mayor Boudreau, and Planning Commission

FROM: Rebecca Lowell, Senior Planner

SUBJECT: PLANNING STUDY ON 'ADULT USES'

INTRODUCTION:

The City of Mount Vernon is subject to the State Growth Management Act (GMA) (36.70A RCW). Part of the GMA [RCW 36.70A.130(1)(a)] requires that the City's comprehensive plan "be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section". Further, subsection (5)(b) of this same RCW requires that the City "take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter...on or before June 30, 2016, and every eight years thereafter, for... Skagit...county...".

On September 14, 2016 the City adopted Ordinance 3690 approving the above-described required update to the City's Comprehensive Plan.

Part of the City's Comprehensive Plan update process included an evaluation of the City's development regulations to ensure that they are, and will remain, consistent with the adopted Comprehensive Plan. This evaluation lead planning staff to create a list of development regulations that should be evaluated and possibly amended in the future due, primarily, to the time that had lapsed since these original regulations were adopted.

The City's zoning code regulations pertaining to adult uses were first adopted in 1985 and substantively amended just once in 1995. The potential for undesirable impacts, in conjunction with regulations that have not been analyzed in over two decades, as well as changes in the law related to adult entertainment uses, lead to the initiation of the foregoing Planning Study.

Within the context of this study adult uses includes, but are not limited to, bookstores, cabarets, drive-in theaters, entertainment, motion picture theaters, retail stores and drive through businesses, video stores, massage parlors, panorams, previews, picture arcades, and peep shows all of which are characterized by a predominate emphasis on matters related to sexual activities and/or anatomical areas that are further described within the Mount Vernon Municipal Code (MVMC).

This planning study on adult uses is organized into the following sections:

INTRODUCTION

Introduction.....1

SECTION A – BACKGROUND3 - 6

SECTION B – EXISTING CONDITIONS

B.1: Mount Vernon’s Landscape Setting 7-8

B.2: Mount Vernon’s Demographics 9-11

B.3: Mount Vernon’s Land Use Patterns 12-16

SECTION C – IMPACTS ANALYSIS..... 17 - 20

SECTION D – LOCATION ANALYSIS21 - 32

TABLES:

1.0: Jurisdiction Sizes 20159

2.0: Population Growth 1990 - 20159

3.0: Population Density 201511

4.0: Mount Vernon Land Use Types13

6.0: Summary of Land Use Types.....10

7.0: Sensitive Areas Defined by Other Jurisdictions18

8.0: Sensitive Uses Identified by Mount Vernon19 - 20

9.0: Examples of Adult Use Buffers From Others21

10.0: Summary of sites that could be developed with adult uses31

11.0: Potential Adult Use Areas and Relationship to Population/Acreage32

12.0: Comparison of Adult Entertainment Use Areas to Others32

GRAPHS:

2.1: Population Growth 1990 - 201510

2.2 2015 Total Population10

6.1 Mount Vernon Land Use Types15

MAPS:

LU-1.0: Regional Setting7

LU-2.0: Local Setting8

LU-3.0: Land Use Types13

LU-4.0: Sensitive Uses and Buffer Zones26

LU-5.0: Property Available for Adult Uses in C-L Zone27

LU-6.0A: Floodplain in Mount Vernon33

LU-6.0B: FEMA Flood Zones34

APPENDIX A – PLANNING STUDIES

APPENDIX B – DEVELOPMENT POTENTIAL DATA FOR SITES ON MAP 5.0

APPENDIX C – PLANNING COMMISSION 7.2.85 MINUTES AND 10.24.16 CEDD LETTER

A. BACKGROUND

1. EXISTING ZONING CODE REGULATIONS FOR ADULT ENTERTAINMENT

The City’s zoning code (Title 17) currently regulates adult entertainment and uses as follows:

CHAPTER OF ZONING CODE:	REGULATION:
17.06.010,A Definitions	<p>Adult bookstore” means a retail establishment in which:</p> <p>A. Twenty-five percent or more of the “stock-in-trade” consists of books, magazines, posters, pictures, periodicals or other printed material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” as defined in the Mount Vernon Municipal Code;</p> <p>B. “Stock-in-trade” for the purpose of this section shall mean the greater of:</p> <ol style="list-style-type: none">1. The retail dollar value of all books, magazines, posters, pictures, periodicals, or other printed 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; or2. The total volume of shelf space and display area; <p>C. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where books, magazines, posters, pictures, periodicals, or other predominant emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” as defined in the Mount Vernon Municipal Code, are displayed or sold.</p> <p>“Adult cabaret” means a commercial establishment which presents go-go dancers, strippers, or similar entertainers and which excludes any person by virtue of age from all or any portion of the premises; and which includes the display of “specified anatomical areas” or “specified sexual activities” as currently defined within this chapter, or as these definitions may be amended in the future.</p> <p>“Adult drive-in theater” means a drive-in theater where at least 25 percent of the use is used for presenting motion picture films, video cassettes, cable television, or any other like visual media, distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined in the Mount Vernon Municipal Code.</p> <p>“Adult entertainment” means any enterprise from which minors are excluded and which sells, rents or displays sexually explicit matter, including, but not limited to, adult bookstores, adult magazine stores, stores selling sexually oriented adult games or devices, adult motion picture theaters, adult mini-motion picture theaters, adult peep shows, establishments where nude or topless dancing or other displays regularly occur or other similar business.</p>

**CHAPTER OF
ZONING CODE:**

REGULATION:

**17.06.010,A
Definitions**

Adult Entertainment Establishment. The following businesses or facilities are defined or referred to as “adult entertainment establishments”:

- A. Adult book stores;
- B. Adult cabarets;
- C. Adult drive-in theaters;
- D. Adult entertainment and adult entertainment premises;
- E. Adult motion picture theater;
- F. Adult retail stores;
- G. Adult video stores;
- H. Massage parlors and public bath houses;
- I. Panorams, previews, picture arcades, and peep shows, as defined in Chapter 5.56 MVMC.

“Adult motion picture theater” means an enclosed building where at least 25 percent of the use is used for presenting, for commercial purposes, motion picture films, video cassettes, cable television, or any other like visual media, distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined in the Mount Vernon Municipal Code for observation by patrons therein.

“Adult retail store” means a retail establishment in which:

- A. Twenty-five percent or more of the “stock-in-trade” consists of items, products, or equipment distinguished or characterized by a predominant emphasis or simulation of “specified sexual activities” or “specified anatomical areas” as defined in the Mount Vernon Municipal Code; or
- B. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where products or equipment distinguished or characterized by a predominant emphasis or simulation of “specified sexual activities” or “specified anatomical areas” as defined in the Mount Vernon Municipal Code are displayed or sold.

“Adult video store” means a retail establishment in which:

- A. Twenty-five percent or more of the “stock-in-trade” consists of prerecorded video tapes, discs, or similar material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined in the Mount Vernon Municipal Code; or
- B. Any person is excluded by virtue of age from all or part of the premises generally held open to the public where prerecorded video tapes, discs, or similar material distinguished or characterized by a predominant emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined in the Mount Vernon Municipal Code are displayed or sold.

“Specified anatomical areas” means both of the following:

- A. Less than completely and opaquely covered:
 - 1. Human genitals, pubic region;
 - 2. Buttock;
 - 3. Breast below a point immediately above the top of the areola;
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

CHAPTER OF ZONING CODE:	REGULATION:
17.06.190,S Definitions	<p>“Specified sexual activities” means all of the following:</p> <ul style="list-style-type: none"> A. Human genitals in a state of sexual stimulation or arousal; B. Acts of masturbation, sexual intercourse, or sodomy; C. Fondling or other erotic touching of human genitals, pubic region, buttock, or breast.
17.35.050, Prohibited uses (in HD zone)	<ul style="list-style-type: none"> B. Adult entertainment.
17.45.030, Permitted uses (in C-1 zone)	<p>Ground-level uses where visible from the street: (in C-1a and C-1b)</p> <p>10. Adult entertainment establishments, as herein defined; provided, that no adult entertainment establishment shall be located nearer than 1,000 feet from any other adult entertainment establishment; and provided further, that no adult entertainment establishment shall be located nearer than 1,000 feet from any public or private school, church, or public park. Distances as provided in this subsection shall be measured 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,</p>
17.48.020, Permitted uses (in C-2 zone)	<p>11. Adult entertainment establishments, as herein defined; provided, that no adult entertainment establishment shall be located nearer than 1,000 feet from any other adult entertainment establishment; and provided further, that no adult entertainment establishment shall be located nearer than 1,000 feet from any public or private school, church, or public park. Distances as provided in this subsection shall be measured 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; and</p>
17.51.040, Conditional Uses (in C-3 zone)	<ul style="list-style-type: none"> B. Adult entertainment; provided, that no adult entertainment establishment shall be located nearer than 1,000 feet from any other adult entertainment enterprise;
17.54..050, Prohibited uses (C-4 zone)	<ul style="list-style-type: none"> A. Adult entertainment.

Adult uses were first defined and regulated in the City’s zoning code in 1985 with the adoption of Ordinance 2188 with subsequent amendments to these regulations in 1994 and 1995 with Ordinances 2631 and 2688, respectively.

ORDINANCE NUMBER:	DATE ADOPTED:
2188	July 24, 1985
2631	December 14, 1994
2688	July 25, 1995

Staff conducted interviews with City staff that have lived in Mount Vernon since the early 1970’s, including a retired Mount Vernon Police officer, to determine the extent of and details surrounding historic adult uses in the City. Staff is not aware of any businesses operating in the City today that include adult uses as currently defined in the Mount Vernon Municipal Code¹.

Following is a brief summary of the two businesses that historically offered adult uses in the City along with the one recent request to operate an adult use in the City. Staff is not aware of any other requests submitted to the City for adult uses since 2004.

- Near the 400 block of Myrtle Street there existed a business named the ‘Green Door’ owned by Arnold Libby that was in operation in the mid-1980s. Staff is told that the Green Door offered coin operated peep shows featuring topless dancers and pornographic movies. Staff was able to find meeting minutes from the City’s Planning Commission from July 2, 1985 that reference both the Green Door and Peking Gardens; these minutes can be found in the accompanying **Appendix C**.
- Near the 600 block of 1st Street there existed a business named ‘Peking Gardens’ owned by Roy Kraus that was in operation in the late 1970s. Staff is told that this business had topless women dancing on an elevated stage.
- The City received a request in October 2016 from David Davidson who is asking to operate an adult retail store at 920 Lincoln Street #B. A copy of the City’s response to Mr. Davidson can be found within **Appendix C** of this study.

¹ Should City Council adopt development regulations recommended by staff it is possible that the one bikini espresso stand located in Mount Vernon (named ‘Foxy Lady Lattte’, located at 2626 Henson Road) will need to make sure that their employees are not engaging in adult sales practices which includes activities 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 where their conduct is likely to be viewed by the public.

B. EXISTING CONDITIONS:

This section contains information on the following:

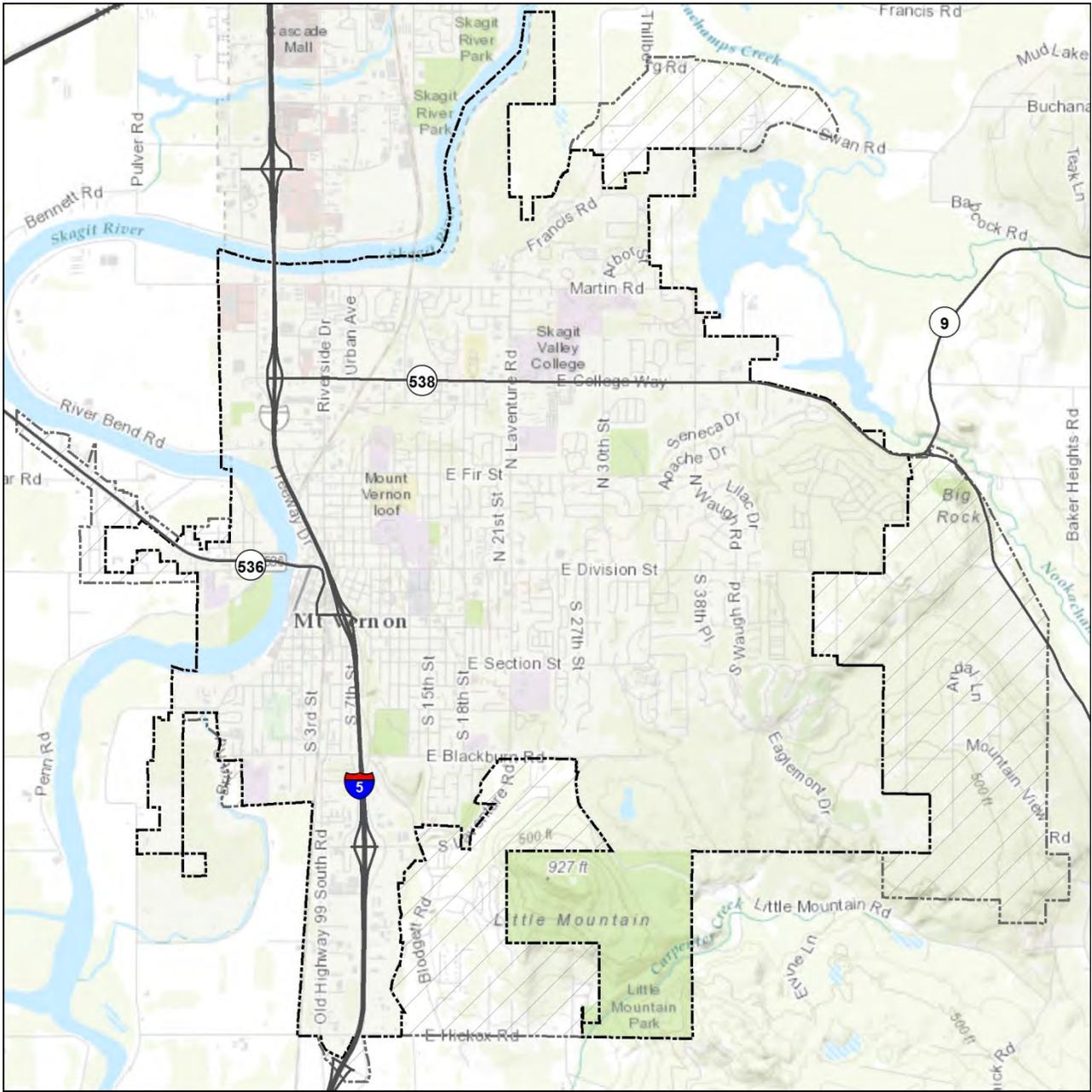
1. Mount Vernon's Landscape setting;
2. Mount Vernon's demographics; and,
3. Mount Vernon's land use patterns.

1. MOUNT VERNON'S LANDSCAPE SETTING

The City is situated with the Seattle metropolitan area approximately 60 miles to the south, Vancouver B.C. approximately 80 miles to the north, and the Puget Sound approximately six miles to the east. Following are two maps illustrating the City's regional and local setting.

MAP 1.0: REGIONAL SETTING





MAP 2.0: LOCAL SETTING

- City Boundary
- Urban Growth Area
- State Highway
- Skagit County Boundary

Basemap and data courtesy of ESRI, Skagit County, WSDOT, City of Mount Vernon

Map by MV GIS 7/5/2016

2. MOUNT VERNON’S DEMOGRAPHICS

Skagit County is comprised of four cities: Anacortes, Burlington, Mount Vernon, and Sedro-Woolley, along with four towns: Concrete, Hamilton, LaConner, and Lyman. In 2015 each of Skagit Counties’ four towns had populations of less than 1,000 people and were comprised of 1.4 square miles or less. As such, the towns are not included in the comparisons below because their demographics are significantly different than unincorporated Skagit County and the cities analyzed below.

Table 1.0 provides the size in square miles of Mount Vernon, the listed cities, and unincorporated Skagit County.

TABLE 1.0: JURISDICTION SIZES 2015

JURISDICTION	2015 SIZE IN SQUARE MILES ¹
Mount Vernon	12.63
Anacortes	13.16
Burlington	4.09
Sedro-Woolley	4.15
Unincorporated Skagit County	1,693.52

¹ State of WA: Office of Financial Management. (2015, December). 2015 Data Book.

Table 2.0 and graphs 2.1 and 2.2 list and show how Mount Vernon’s population has grown over time; and compares this growth to other Skagit County cities and unincorporated Skagit County.

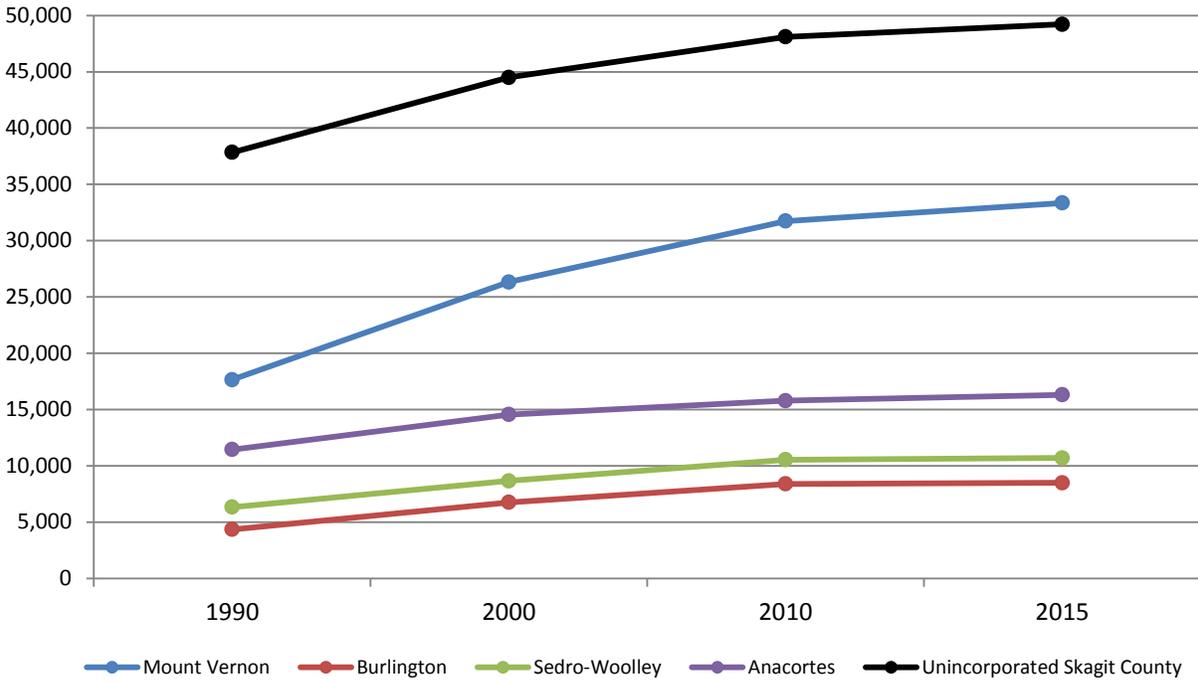
TABLE 2.0: POPULATION GROWTH 1990 - 2015

YEAR	POPULATION				
	Mount Vernon	Burlington	Sedro-Woolley	Anacortes	Unincorporated Skagit County
1990 ¹	17,647	4,349	6,333	11,451	37,841
2000 ¹	26,332	6,757	8,658	14,557	44,506
2010 ¹	31,743	8,388	10,540	15,778	48,110
2015 ²	33,350	8,485	10,700	16,310	49,220

¹ 1990 – 2010 population: U .S. Census Bureau; Census 1970, 1980, 1990, 2000, 2010 Profile of General Population and Housing Characteristics: Mount Vernon City, WA. Retrieved October 20, 2016 from www.factfinder.census.gov

² 2015 population: Office of Financial Management (2016, April 1). Population of Cities, Towns and Counties Used for Allocations of Selected State Revenues State of WA.

GRAPH 2.1: POPULATION GROWTH 1990 - 2015



GRAPH 2.2: 2015 TOTAL POPULATION

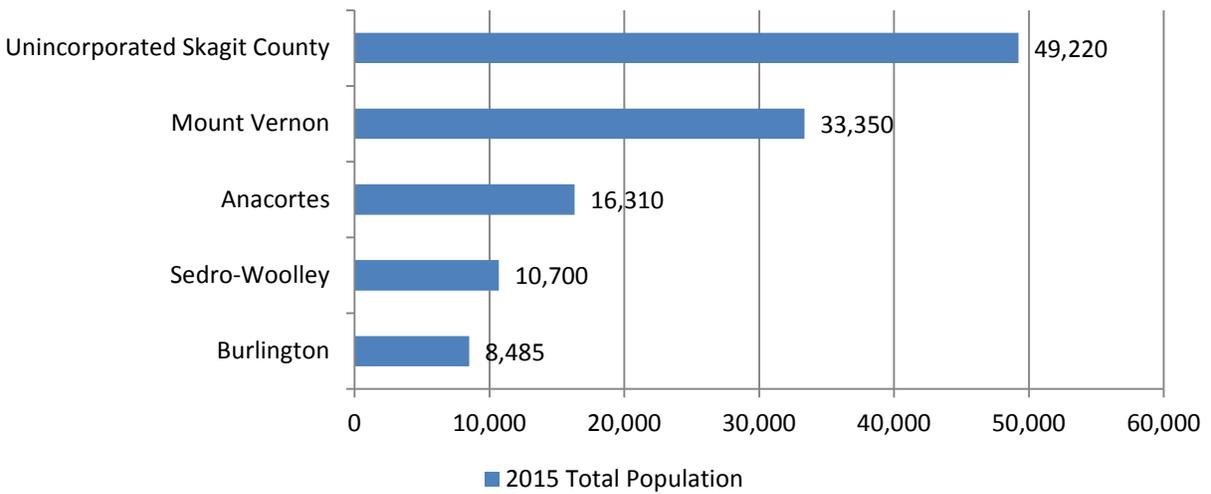


TABLE 3.0: POPULATION DENSITY 2015

JURISDICTION	2015 SIZE IN SQUARE MILES ¹	POPULATION ²	DENSITY POPULATION/SQUARE MILES
Mount Vernon	12.63	33,350	2,640.5
Anacortes	13.16	16,310	1,239.4
Burlington	4.09	8,485	2,074.5
Sedro-Woolley	4.15	10,700	2,578.3
Unincorporated Skagit County	1,693.52	49,220	29.1

¹ State of WA: Office of Financial Management. (2015, December). 2015 Data Book.

² Office of Financial Management (2016, April 1). Population of Cities, Towns and Counties Used for Allocations of Selected State Revenues State of WA.

Table 4.0 contains the number of Mount Vernon residents that are under the age of 18 and compares this age demographic to Skagit Counties' other cities.

TABLE 4.0: RESIDENTS UNDER 18 YEARS OF AGE IN 2014

JURISDICTION	POPULATION ¹	RESIDENTS UNDER 18 ²	% OF POPULATION UNDER 18
Mount Vernon	33,350	9,119	27%
Anacortes	16,310	2,890	18%
Burlington	8,485	2,160	25%
Sedro-Woolley	10,700	2,835	26%

¹ Office of Financial Management (2016, April 1). Population of Cities, Towns and Counties Used for Allocations of Selected State Revenues State of WA.

² U.S. Census Bureau. (2014). American FactFinder fact sheet: Population Under 18 Years by Age: Anacortes, Burlington, Mount Vernon, Sedro-Woolley. Retrieved October 20, 2016, from <http://factfinder.census.gov>.

3. MOUNT VERNON'S LAND USE PATTERNS

The City's land use patterns have, over time, been heavily influenced by the location of the Skagit River, the Burlington Northern Railroad, Interstate-5, State Routes 536 and 538, and the topographic changes that occur as one heads east and southeast through the City.

The City's first business district was formed on the east side of the river where the City's historic downtown district still exists today (generally between Division and Kincaid Streets). Additional business/commercial/industrial areas have developed around major transportation corridors such as Interstate-5, Riverside Drive, College Way (SR 536) and more recently in the South Mount Vernon area where both Old Highway 99 and Interstate-5 run north/south.

Historically natural disasters such as floods and fires spurred residential growth at higher elevations on the east side of the City moving away from the Skagit River and Interstate-5. In large part these land use patterns still exist today.

Following is **Map 3.0** that illustrates the City's overall land use types; e.g., commercial/industrial, residential, and other (public, open spaces, etc). In addition to this map, Tables 5.0, 6.0 and Graph 6.1 summarize the acreage of the City's land use types. Evident is that the City is composed predominately of areas used for residential purposes.

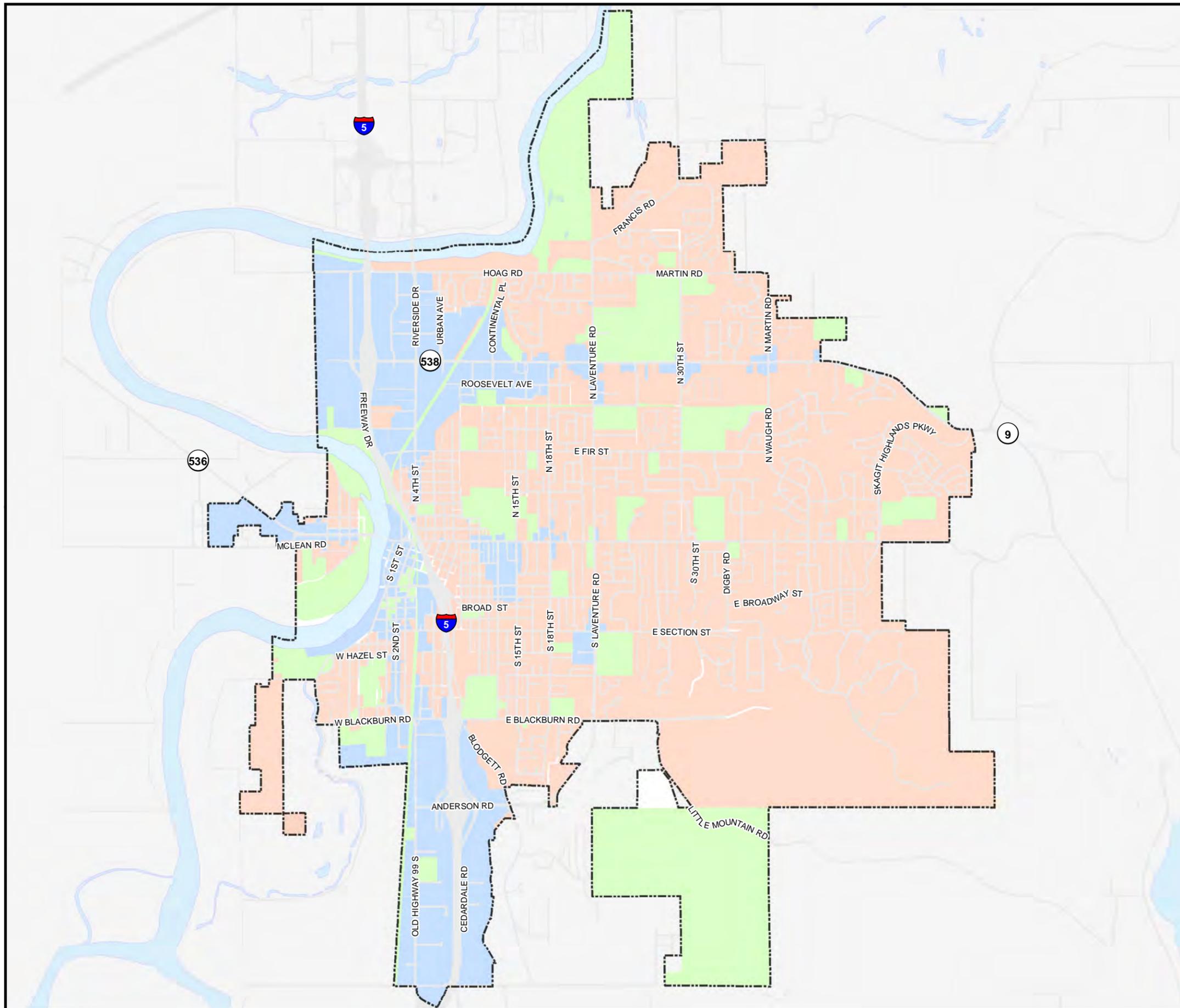
It is important to understand that **Map 3.0**, Tables 5.0, 6.0 and Graph 6.1 have been created using the City's existing zoning information. This distinction is important because the zoning designation of property does not always directly correlate to the actual use of a site. For example, the City has a number of properties that are zoned for commercial or industrial uses that contain existing residential structures being used for residential purposes. While existing residential uses in commercial or industrial zones are observed throughout the City it is far more unusual to see commercial or industrial uses in residential zones.

Additionally, the City has four zoning designations that allow for mixed use development that either do, or potentially could, have both residential and commercial primary permitted or conditional uses in close proximity to each other. These mixed use zones include: Residential Office (MVMC Chapter 17.33), Central Business District (MVMC Chapter 17.45), Community Commercial District (MVMC Chapter 17.51), and Neighborhood Commercial District (MVMC Chapter 17.54).



"Adult Uses" Planning Study Map 3.0 General Land Use Types

- Residential Zoning
- Commercial Zoning
- Other Non-Commercial Zoning
- City Boundary
- Water Body



Map updated 10/24/2016 by MV GIS, Parcel data courtesy of Skagit County GIS
The City of Mount Vernon does not warrant, guarantee or accept any liability for the accuracy, precision or completeness of any information shown or described hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the

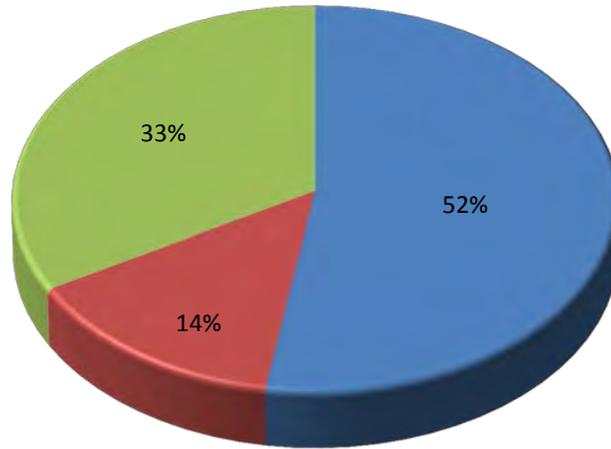
TABLE 5.0: MOUNT VERNON LAND USE TYPES

	ZONING DESIGNATIONS	ACRES
RESIDENTIAL LAND USES	Single-Family Residential (R-1, 3.0, 4.0, 5.0, 7.0, Eaglemont PUD, and R-A)	3,999
	Multi-family Residential (R-2, R-3, R-4)	363
	Mobile Home Park (MHP)	126
COMMERCIAL AND INDUSTRIAL LAND USES	Commercial (C-2)	510
	Commercial Allowing Residential Uses (C-1, C-3, C-4, R-O)	78
	Commercial Light Industrial (C-L)	416
	Industrial (M-1, M-2)	112
	Healthcare Development District	29
	Professional Office, Limited Commercial (P-O, LC)	33.5
OTHER LAND USES	Public	1,376
	Skagit River, Dike, Flood, Right-of-Way, and Railroad	991.5
TOTAL ACREAGE:		8,034

TABLE 6.0: SUMMARY OF LAND USE TYPES

LAND USE INFORMATION	ACRES	% OF THE CITY
Total Land Area within Mount Vernon	8,034	100%
Residential Uses Land Area	4,178	52%
Commercial & Industrial Land Area	1,149	14%
Public, River, Floodplain & Right-of-Way	2,668	33%

GRAPH 6.1: MOUNT VERNON LAND USE TYPES



■ Residential ■ Commercial and Industrial ■ Public, River, floodplain and row

This existing conditions section can be summarized as follows:

- Mount Vernon is more than three times larger (in land area) than Burlington or Sedro-Woolley.
- Unincorporated Skagit County is 134 times larger (in land area) than Mount Vernon and Anacortes is .53 square miles larger than Mount Vernon.
- Mount Vernon has two times as many residents as Anacortes, three times as many residents as Sedro-Woolley, and nearly four times as many residents as Burlington.
- Unincorporated Skagit County has close to 16,000 more residents than Mount Vernon; however, unincorporated Skagit County is 134 times larger (in land area) than Mount Vernon making Mount Vernon's population density per square mile of land area 89 times more dense than unincorporated Skagit County.
- As a percentage of total population, Mount Vernon has more residents under the age of 18 than any of the other Skagit County cities do. In addition, as a total number Mount Vernon has three times as many residents under the age of 18 than any other Skagit County city.

C. IMPACTS ANALYSIS:

The City is vested with the authority to regulate land uses to ensure the public's health, safety, welfare, and economy is protected. When evaluating new regulations, or updating existing ones, the first item planning staff considers are foreseeable impacts generated from a given use that could produce land use and other secondary adverse impacts.

Research compiled to-date shows that numerous communities both in Washington State and across the Country have experienced negative secondary impacts from adult uses. Evaluating experiences from other jurisdictions that have experience with regulating adult uses is important because Mount Vernon is able to learn from these experiences and adopt regulations to mitigate the negative impacts others have endured.

A summary of some of the more significant negative impacts from existing adult entertainment uses in other jurisdictions are briefly summarized below with the full text of these reports accompanying this study in **Appendix A**.

- The City of Bellevue, WA lists secondary effects of increased incidence of crime, property values declining, and incompatibilities between land uses.
- The City of Des Moines, WA identified negative impacts from adult uses including: decreases in property values, deterioration of areas including deferred maintenance, economic impacts from increased turnover in tenants adjacent and near these uses, parking and traffic problems, attraction of transients, interference with parental responsibilities for children, incompatibility with residences, schools, churches, and park areas, and increased crime.
- The City of Kent, WA documented Incidence of increased crime, property values decreasing and neighborhoods deteriorating within areas located near adult uses.
- The City of Olympia, WA notes that adult oriented businesses generally create an atmosphere for increases in crimes such as assault, theft, robbery, prostitution, drug use, and others, that surrounding property values tend to decline as a result of the appearance of these businesses and the activities they attract.

Table 7.0, below, summarizes sensitive uses identified by other jurisdictions when they completed evaluations of adult uses in their respective jurisdictions.

TABLE 7.0: SENSITIVE USES IDENTIFIED BY OTHER JURISDICTIONS

JURISDICTION	SENSITIVE USES DEFINED
EVERETT	Public Library Public playground or park Public or private school and its grounds, from kindergarten to twelfth grade Nursery school or day care center Church, temple, mosque, synagogue, or other place of religious worship Lot located in Residential zones
FEDERAL WAY	Public Park Library Day care center for children, nursery, or pre-school Church or other facility or institution used primarily for religious purposes Public or private elementary or secondary school
KELSO	Existing youth-oriented business or activity defined as: “Youth-oriented business or activity” means a business utilizing a permanent building or facility where children under the age of eighteen years are invited onto the business premises in conjunction with such business activity and at least fifty percent of the business revenue is generated from their patronage.
KENNEWICK	Residential zone Public or private school, or any trade or vocational school that on a regular basis has at least one student under the age of eighteen years Church or other religious facility or institution Park or any public facility or open space zone
KING COUNTY	Certain residential zones Schools Licensed daycare centers Public Parks or trails Community centers Public Libraries Churches
MUKILTEO	Residential zones Public Park Public library Public or private nursery school or preschool Public or private primary or secondary school Daycare Community Youth Center Place of Worship
OAK HARBOR	Schools Religious institutions Parks Certain Residential Zones

JURISDICTION	SENSITIVE USES DEFINED
THURSTON COUNTY	Property used for public and private schools; Property used for public parks; Property used for public libraries; Property used for state-certified day care; Property used for public community centers; Property used for churches, cemeteries or other religious facilities or institutions; Certain residential zones
VANCOUVER	Public park Child care facility licensed by the State of Washington Preschool Permanent religious institution Public or private elementary, middle, junior high or high school Certain residential districts
SNOHOMISH COUNTY	Private School Preschool Educational Institution Church or other Religious Facility Public or Private Park Youth Oriented Facility Establishment Serving Alcohol by the Drink

After much research, planning staff identified the following list of uses that should be buffered from adult uses due to the sensitive nature of these uses and the high potential for secondary adverse impacts. The following list of sensitive uses were chosen primarily because they are uses in areas where minor children and families are likely to congregate and be present.

TABLE 8.0: SENSITIVE USES IDENTIFIED BY MOUNT VERNON

SENSITIVE USE:	DEFINITION OF SENSITIVE USE:
PARKS	A tract of land owned or maintained by a public entity that is designated for and used by the public for active and passive recreational activities.
TRAILS	Linear shaped facilities designed and intended for the public to walk, run, or otherwise travel across that are owned or maintained by the City of Mount Vernon.
CHURCHES	Are buildings or structures, or groups of buildings or structures, which by design and construction are primarily intended for the conducting of organized religious services and accessory uses associated therewith.
SCHOOLS	Any building or part thereof designed, constructed, or used for formal educational uses that are recognized by the Washington state superintendent of public instruction. This definition includes both public and private schools.

SENSITIVE USE:	DEFINITION OF SENSITIVE USE:
CHILD CARE CENTERS	Are 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.
LIBRARIES	Facilities that include organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.
GAME ARCADES	Are entertainment venues featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

D. LOCATION ANALYSIS:

Now that staff has outlined the existing conditions of the City in terms of its landscape setting, demographics, and land use patterns and evaluated the land use and secondary impacts likely to occur from adult uses, staff is able to make informed recommendations with regard to where these uses will result in the fewest negative impacts.

The list below contains the steps of the assessment that staff completed to answer the question of where should adult uses should be allowed in the City.

1. **REMOVED RESIDENTIALLY ZONED AREAS FROM CONSIDERATION.** The City is comprised of nineteen distinct zoning classifications. The intent of, and primary permitted uses, in six of these zones are residential uses (R-A, R-1, R-2, R-3, R-4 and MHP). These zones largely prohibit commercial, industrial and other similar uses as a way to protect the living environment within these zones.

Additionally, these residential areas have historically, and will continue to be subject to development regulations in terms of road width, utility sizing and the like, aimed at residential areas and uses. This is important because roads would need to be widened, paved parking areas would need to be created, and utilities like potable water and sanitary sewer would likely need to be upsized to serve a commercial or industrial use in an existing residentially zoned area.

For these reasons all of the City's residential zones listed above were not considered as areas where adult uses could be located. Please see the accompanying **Map 3** that delineates the described residential areas from other zones within the City.

2. **BUFFERED EXISTING SENSITIVE LAND USES.** Due to the well documented negative secondary impacts from adult uses, staff determined that these uses are not compatible with certain sensitive land uses where minor children and families are likely to congregate and be present including: residences, parks, trails, churches, schools, child care facilities, libraries, and game arcades.

To buffer these sensitive uses from adult entertainment uses staff needed to determine the distance these incompatible uses need to be separated from adult uses. To make a recommendation on the appropriate separation staff evaluated different separations (or buffers) that a number of different jurisdictions have adopted as part of their development regulations for adult uses. **Table 9.0** summarizes these separations.

TABLE 9.0: EXAMPLES OF ADULT USE BUFFERS FROM OTHERS

	SENSITIVE USES	OTHER ADULT USES
EVERETT	250'	1000'
FEDERAL WAY	1000'	1000'
KELSO	600'	NA
KENNEWICK	500'	1500'
KING COUNTY	300'	3000'
MUKILTEO	800'	500'
OAK HARBOR	750'	NA
VANCOUVER	1000' 500' residential districts	NA
SNOHOMISH COUNTY	330' and 660' (depending on adult use)	660'
THURSTON COUNTY	330'	NA

Analyzing the buffers that other jurisdictions have chosen in conjunction with an evaluation of the City’s street network and block length has led staff to recommend a minimum distance of 650 feet between adult uses and sensitive uses.

Map 4.0, found on the following page, identifies 650-foot buffers around the sensitive areas the City has identified in Table 8.0.

- 3. SELECTED C-L ZONING SOUTH OF BLACKBURN ROAD.** Analyzing the commercial and industrial zoned property outside of the 650-foot buffer zones placed around sensitive land uses listed in **Table 8.0** lead staff to select the C-L zoned property south of Blackburn Road and east of the Burlington Northern Santa Fe (BNSF) rail line (illustrated on **Map 5.0** that follows) as the least impactful area to locate adult uses.

Staff found that although there were small pockets of commercial and industrial zoned property outside of the sensitive use buffers not within the C-L zoned area south of Blackburn Road and east of the BNSF rail line, many of these areas are in close proximity to commercial and retail uses frequented by minor children and their families. For example, in the northwest part of the City there exists many retailers and restaurants such as Wal-Mart, Lowes Home Improvement, Rite Aid, Burger King, IHOP, among many others.

The City’s adopted Comprehensive Plan contains the following Goals, Objectives and Policies related to buffering incompatible uses, protecting residential neighborhoods, enhancing tourism, and prioritizing the beautification of the City.

LAND USE ELEMENT:

OBJECTIVE LU-1.2 Maintain and enhance the character of existing single-family neighborhoods but not preclude redevelopment and/or new development within established neighborhoods.

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.

GOAL LU-5 ENHANCE AND IMPROVE THE QUALITY OF SINGLE-FAMILY LIVING ENVIRONMENTS THROUGHOUT THE CITY.

OBJECTIVE LU-5.1 Ensure that new development in the single-family residential designations are designed to provide quality homes and neighborhoods for residents and take care to mitigate impacts of new development on existing neighborhoods.

GOAL LU-6 ENHANCE AND IMPROVE THE QUALITY OF MULTI-FAMILY LIVING ENVIRONMENTS THROUGHOUT THE CITY THAT PROVIDE AREAS THAT OFFER A LARGER RANGE OF HOUSING OPTIONS IN THE FORM OF MULTI-FAMILY UNITS.

Policy LU-6.1.3 Due to increased impacts to privacy and personal living space inherent in higher density living environments, new development shall be designed to create a high quality living environment with ample public open spaces within a walkable urban context.

Policy LU-6.1.4 Evaluate project proposals in residential multi-family designations to consider the transition to lower density uses where multi-family sites abut lower density zones. Setbacks may be increased, heights reduced, and additional landscape buffering required through site plan review.

Policy LU-6.1.5 New multi-family residential projects should demonstrate provisions for an environment that contributes to a high quality of life for future residents, regardless of income level.

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.

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.

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.

GOAL LU-12: DEVELOPMENT REGULATIONS SHALL BE ADOPTED TO REDUCE THE APPARENT MASS OF LARGER COMMERCIAL BUILDINGS, TO PROVIDE VISUAL INTEREST, AND TO HELP BLEND INTO THE RESIDENTIAL NEIGHBORHOODS IN WHICH THEY ARE LOCATED.

GOAL LU-13: ENSURE THAT COMMERCIAL BUILDINGS ARE IN SCALE WITH THE SURROUNDING RESIDENTIAL NEIGHBORHOODS.

GOAL LU-14: DEVELOPMENT REGULATIONS SHALL BE ADOPTED THAT ENSURE THAT MECHANICAL EQUIPMENT, VAULTS, AND OUTDOOR STORAGE ARE SCREENED TO ENHANCE THE APPEARANCE OF THE COMMERCIAL BUILDINGS WITHIN THE NEIGHBORHOOD COMMERCIAL ZONE.

GOAL LU-15: DEVELOPMENT REGULATIONS SHALL BE ADOPTED THAT BALANCE SAFETY AND SECURITY AND THE RESIDENTIAL NATURE IN WHICH COMMERCIAL USES IN THE C-4 ZONE ARE LOCATED.

HOUSING ELEMENT:

GOAL 1: Promote the preservation, maintenance and enhancement of existing housing and residential neighborhoods throughout the City.

Objective HO-1.1 Promote infill housing that is compatible with abutting housing styles and with the character of the existing neighborhood.

Policy HO-1.1.1 Encourage infill housing on vacant or underutilized parcels having adequate services, and ensure that the infill development is compatible with surrounding neighborhoods.

Policy HO-1.1.2 Adopt development regulations that enhance existing single family neighborhoods by requiring significant changes in density be transitioned near these existing neighborhoods. Ways to transition from higher-density to existing single-family neighborhoods include (but are not limited to) the following: reducing densities and building heights closest to existing neighborhoods; and require landscaping treatments and fencing surrounding higher density developments.

Objective HO-1.2 Enhance the value, character and health of the City's existing housing stock by improving and extending the life of such housing.

Policy HO-1.2.1 In cooperation with Skagit County, the City should encourage the preservation of existing housing. Private investment should be encouraged in older residential neighborhoods, manufactured home parks, and multifamily complexes to ensure the health, safety and affordability of existing housing. Programs supporting weatherization, home repair and rehabilitation, and infrastructure maintenance should be supported.

HEALTH AND WELLNESS ELEMENT:

GOAL HW-2 IMPROVE THE SAFETY OF NEIGHBORHOODS AND PUBLIC SPACES.

Policy HW-2.1 Study ways to improve neighborhood involvement in crime prevention, neighborhood beautification, and the reduction of blight throughout the City.

GOAL HW-4 PRIORITIZE THE BEAUTIFICATION OF THE CITY.

Policy HW-4.2 Make streets, trails and other public spaces more visually appealing and comfortable for the public by ensuring that street trees are planted, landscaping is maintained and regularly inspecting and cleaning these areas.

ECONOMIC DEVELOPMENT ELEMENT:

GOAL 1 HAVE A STRONG PROACTIVE POSITON TOWARDS ECONOMIC PROSPERITY THAT PROMOTES A POSITIVE CIVIC IMAGE AND ESTABLISHES MOUNT VERNON AS A PREFERRED PLACE FOR INVESTMENT.

OBJECTIVE ED-1.5 Have a strong proactive positon towards revitalization of the downtown as a preferred place to live, work, and play.

OBJECTIVE ED-1.5 Enhance and support tourism in Mount Vernon

Policy 1.5.1 Grow the city’s tourism through special events that are consistent with the community’s values.

Policy 1.5.2 Promote tourism using multiple media outlets and highlight the community assets.

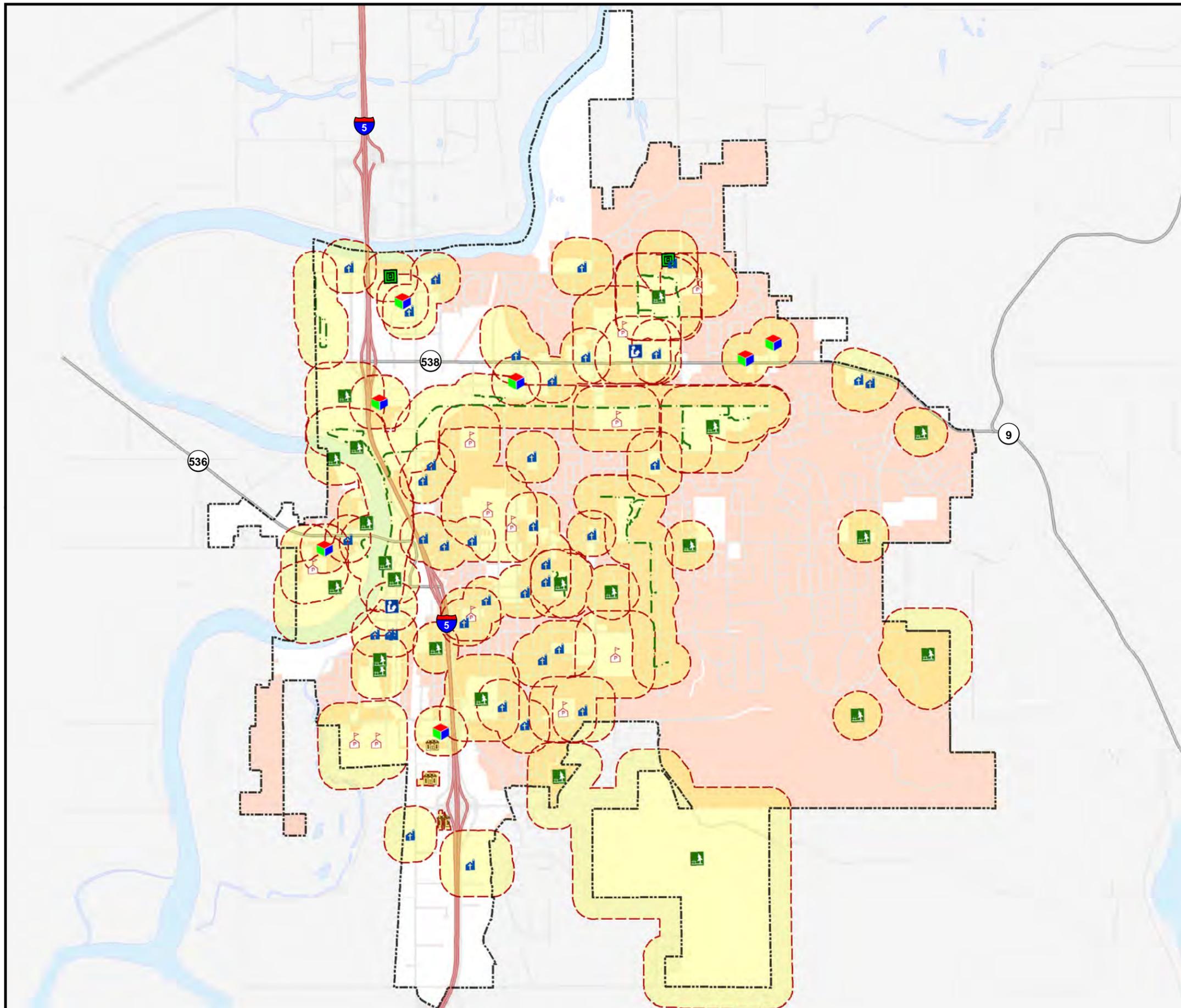
Policy 1.5.3 Continue to emphasize the City’s connection to its rich history to strengthen our community identity.

The permitted uses in the Commercial-Limited Industrial zone, codified as Chapter 17.56 of the MVMC, includes commercial uses such as retail stores, eating and drinking establishments, theaters, bowling alleys, skating rinks, and other entertainment uses. These types of commercial uses mirror the commercial uses allowed in the City’s Central Business District (C-1) and General Commercial District (C-2).



"Adult Uses" Planning Study Map 4.0 Sensitive Areas & Buffers

- 650' Sensitive Area Buffer
- Residential Zone
- City Boundary
- Water Body
- Sensitive Areas**
 - Park
 - Residential Use
 - Church
 - School
 - Daycare
 - Library
 - Game Arcade
 - Trail



Map updated 10/24/2016 by MV GIS, Parcel data courtesy of Skagit County GIS
The City of Mount Vernon does not warrant, guarantee or accept any liability for the accuracy, precision or completeness of any information shown or described hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the

4. **INVENTORY OF C-L ZONED PROPERTY SOUTH OF BLACKBURN ROAD.** To ensure there exists ample opportunities for those wishing to own and operate businesses with adult uses staff completed an in-depth inventory and analysis of the geographic area staff selected as the least impactful area to allow these uses to operate in the City.

To begin this inventory and analysis the following bulleted list of data was collected. All of this data was and analyzed using Geographic Information System (GIS) software.

- Skagit County Assessor’s tax parcels;
- Aerial photography produced in the Spring of 2015;
- Zoning designations;
- Physical improvements on the site (building(s), parking lot(s), storage yards, etc);
- Parcel size;
- Approximate square footage of critical areas including wetlands, streams, and their associated buffers;
- Existing public utilities (sanitary sewer, storm sewer, potable water, power, and lighting);
- Existing public and private roads and associated pedestrian facilities; and,
- Location of the sensitive uses and their associated 650-foot buffers.

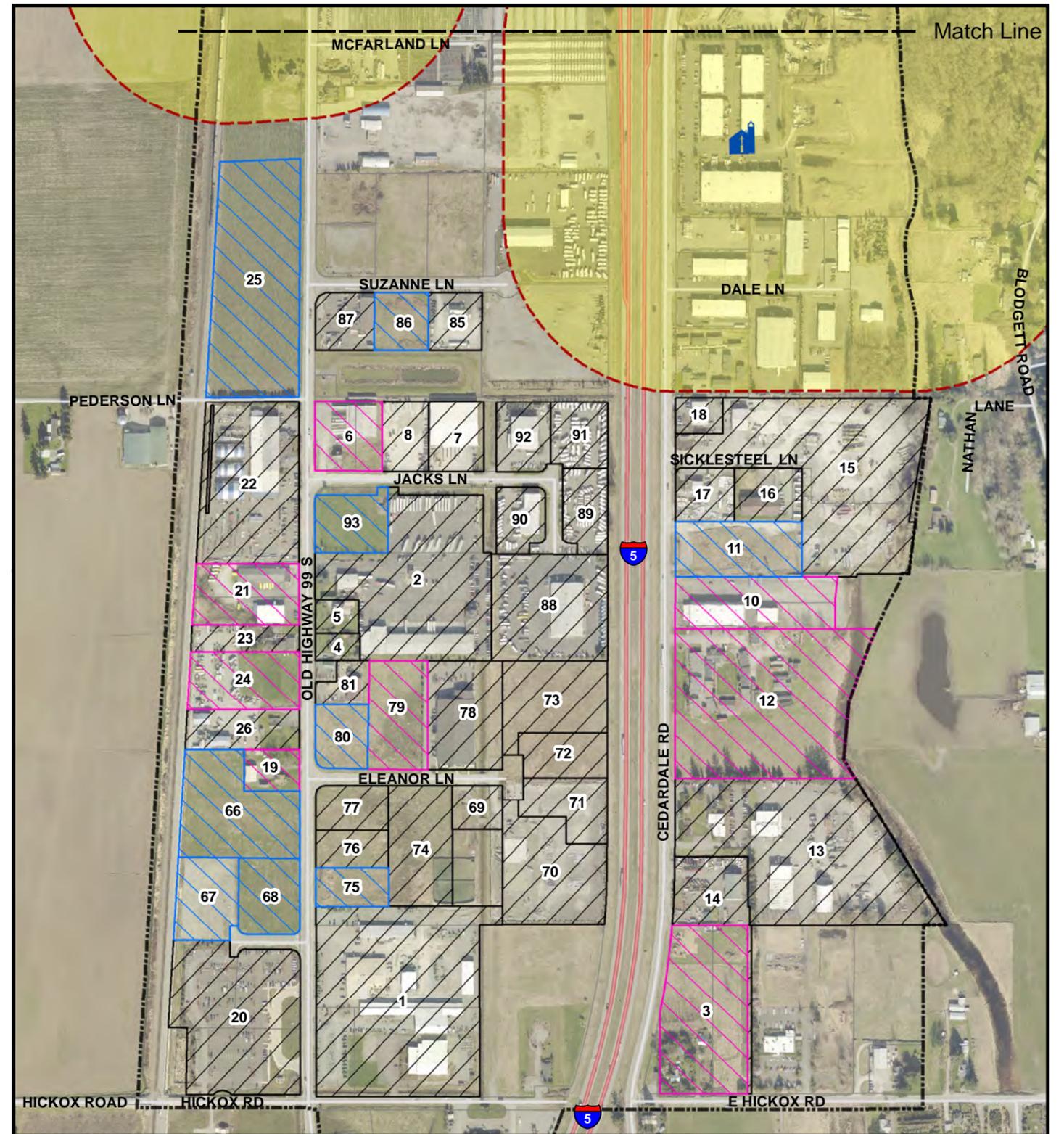
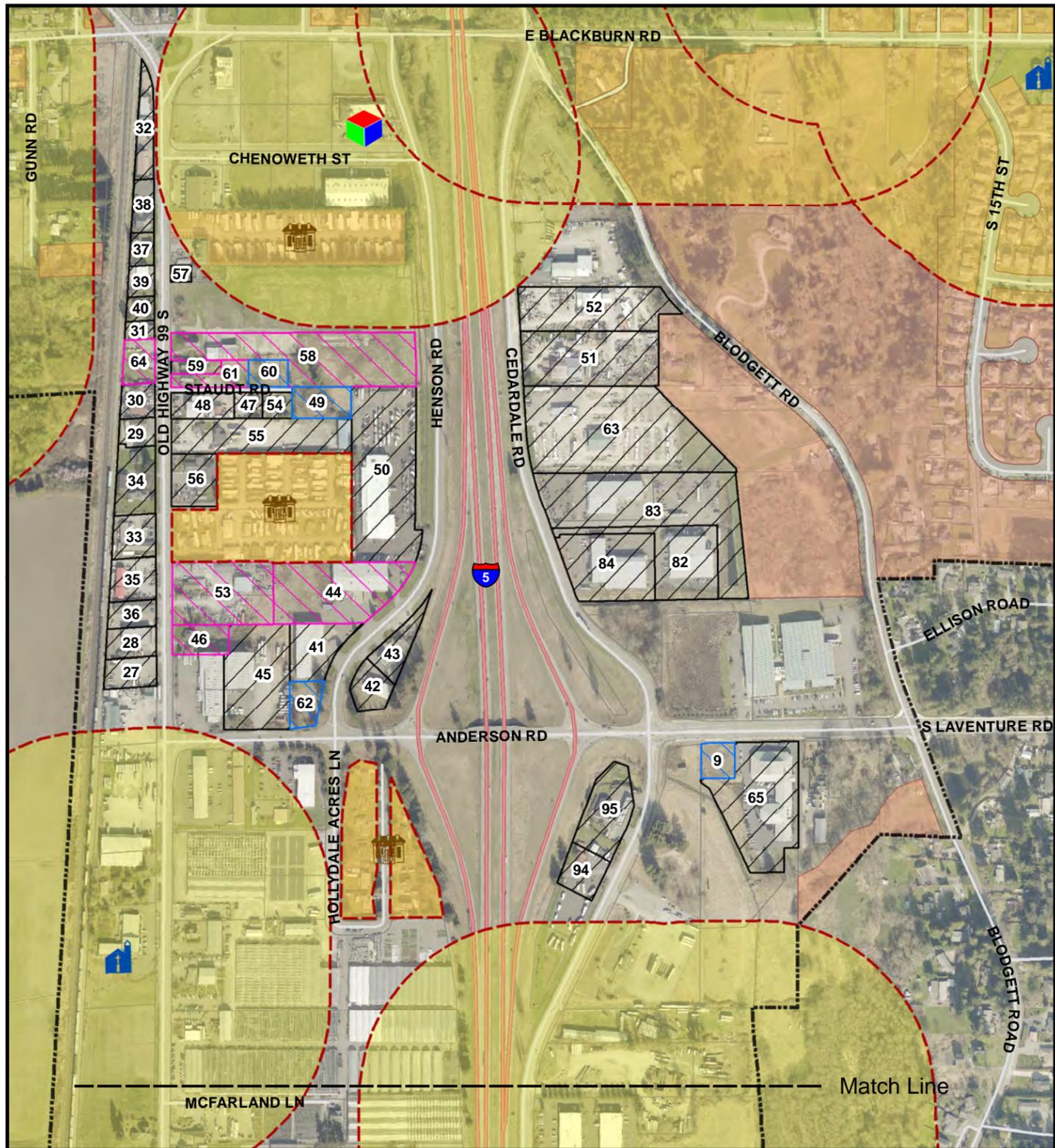
Once the above bulleted list of data was imported into the GIS software staff removed several areas from consideration:

- The sensitive uses and their associated 650-foot buffers that included a daycare center and two churches. If the 650-foot buffer touched part of a nearby parcel that entire parcel was removed from consideration.
- Location of the two existing mobile home parks, and the residential neighborhood accessed by Hollydale Acres Road; and,
- The property where the Skagit County jail is currently under construction.

With the sensitive land uses and their assigned buffers, existing parcels used for residential purposes, and the jail property removed staff was left with 95 sites needing to be evaluated further. The term “site” is used here to describe one or more Skagit County Assessor parcels; in many locations multiple contiguous assessor parcels with overlapping uses under common ownership were logically combined into single sites, e.g. the two parcels comprising the Barnhardt Crane property were combined into a single site.

These 95 remaining sites were then separated into three categories described below and shown on **Map 5.0** that follows.

1. Sites that had existing structures and parking lots such that no new buildings could be constructed – these were labeled as “fully-developed” sites;
2. Sites that have at least 10,000 square feet of un-encumbered property where new buildings and parking areas could be constructed – these were labeled as “partially-developed” sites; and
3. Sites that have not been developed with buildings, parking, etc – these were labeled as “vacant” sites.



"Adult Uses" Planning Study
Map 5.0
C-L Property South of Blackburn

Sensitive Areas

- Park
- Alcohol Sales
- Residential Use
- Church

Facilities

- School
- Daycare
- Library
- Game Arcade

Parcel Types

- Trail
- South MV Vacant C-L Parcel
- South MV Partially-Developed C-L Parcel
- South MV Fully-Developed C-L Parcel

Other Features

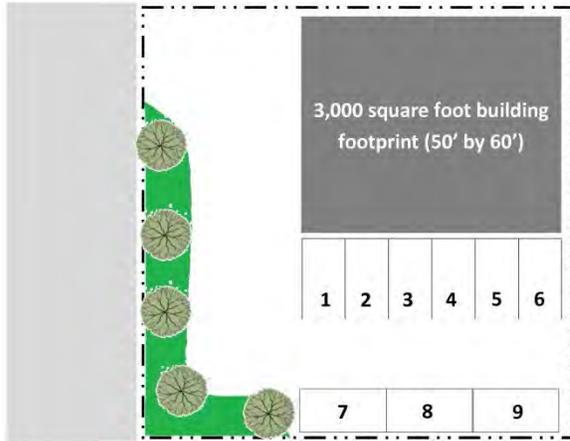
- 650' Sensitive Area Buffer
- Residential Zone
- City Boundary
- Water Body



Map updated 10/25/2016 by MV GIS, Parcel data courtesy of Skagit County GIS

The City of Mount Vernon does not warrant, guarantee or accept any liability for the accuracy, precision or completeness of any information shown or described hereon or for any inferences made therefrom. Any use made of this information is solely at the

A 10,000 square foot lot size was chosen as the ideal lot size for a standalone development after evaluating dozens of commercial/industrial lots that are already developed and finding that a building with a 3,000 square foot footprint, with code compliant parking and landscaping could be developed on a 10,000 square foot lot. Please note that a 3,000 square foot building footprint means that a second or third story could be constructed that would double or triple the square footage of the hypothetical commercial/industrial building. Following is an illustration of how a building footprint, parking and landscaping could all be developed on a 10,000 square foot lot.



- 100' by 100' site shown
- 3,000 s.f. building footprint
- 9 parking stalls = 10' by 20'
- 10' landscape along front yard

All three categories of sites (fully-developed, partially-developed, vacant) were also evaluated to ensure that infrastructure to serve these sites was reasonably available; which staff defined as being within 100± feet of a site. The infrastructure that was inventoried included public and private roads, pedestrian access, lighting, potable water, sanitary and storm sewers and power. This reasonably available infrastructure analysis resulted in five Hickox Road sites totaling over 23 acres in size being removed from consideration prior to evaluation of aforementioned existing uses and critical area buffers.

The flowchart on the next page summarizes the steps staff took in making a determination about whether or not a particular parcel was available for future development or re-development.

1. PROPERTY DATA ON THE COMMERCIAL-LIMITED ZONE PARCELS SOUTH OF BLACKBURN ROAD COMPILED

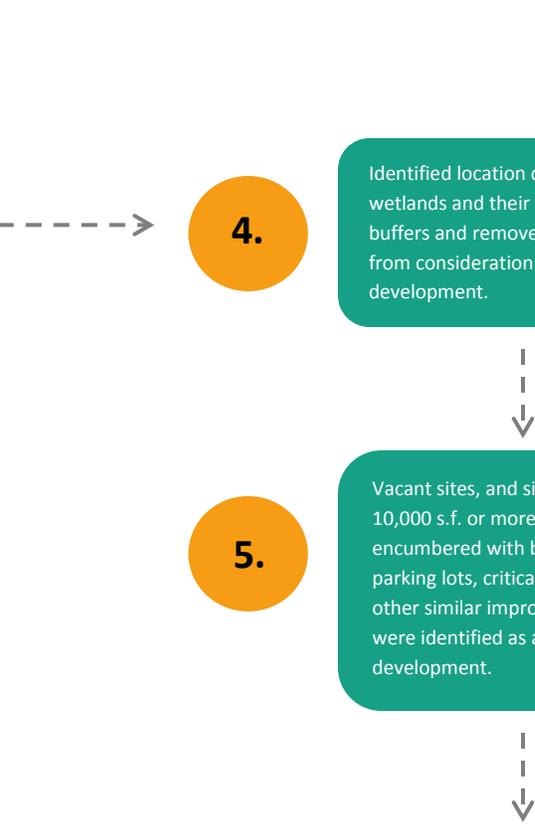
2. All locations were evaluated for city-standard access road(s) and public utilities within 100 ± feet of the site. Parcels not meeting this test were removed from further study.

3. Quantified site area and square footage of physical improvements (buildings, parking lots, storage yards, stormwater ponds, etc)

4. Identified location of streams and wetlands and their associated buffers and removed these areas from consideration for future development.

5. Vacant sites, and sites with 10,000 s.f. or more of area not encumbered with buildings, parking lots, critical areas, and other similar improvements, were identified as available for development.

6. Sites with existing buildings that could be repurposed for uses other than those they are currently used for were also identified as available for re-development.



When evaluating the subject parcels staff made efforts to determine whether or not a developed parcel was encumbered with a long-term lease. This was done by pulling available title reports and reading through deed histories available by the Skagit County Assessor’s office for parcels identified on **Map 5.0**.

Nearly all of the parcels within the area being evaluated are within the 100-year floodplain as shown on **Map 6.0**. FEMA identifies the flood zone these areas are located in as Zone AO (Depth 1) at the far north of the area closest to Blackburn Road and Zone AO (Depth 2) across the remaining areas. Just because property is located in a flood zone it is not precluded from development. Rather, the City’s development regulations (Chapter 15.36 of the MVMC, that are subject to continued review and approval by FEMA and the WA State Department of Ecology) require property developed in these flood zones to either elevate their buildings or flood proof them. In the AO (Depth 1) zone the finished floor of a building (not parking areas – just buildings) is required to be elevated two foot above the average adjacent grade or have the first two feet above grade flood proofed and in the AO (Depth 2) zone the finished floor of a building is required to be elevated three feet above the average adjacent grade or have the first three feet above grade flood proofed.

Accompanying this study in **Appendix B** is a spreadsheet of the parcels that staff has identified as being reasonably available to be developed for adult uses. In addition to the spreadsheet there are copies of as-built maps proving the availability of infrastructure, site specific wetland reports, and documentation of the location of type of streams that flow through this area.

Table 10.0 summarizes the total number and acreage of sites available on property zoned C-L south of Blackburn Road and east of the BNSF rail line shown on Map 5.0.

TABLE 10.0: SUMMARY OF SITE THAT COULD BE DEVELOPED WITH ADULT USES

	# OF SITES AVAILABLE FOR DEVELOPMENT OR RE-DEVELOPMENT	# OF SITES AVAILABLE FOR DEVELOPMENT OR RE-DEVELOPMENT
FULLY DEVELOPED SITES THAT COULD HAVE A NEW TENANT	68	123.7 acres
PARTIALLY DEVELOPED SITES THAT COULD ACCOMMODATE AT LEAST A 10,000 S.F. NEW DEVELOPMENT (BUILDING + PARKING + LANDSCAPING)	14	33.5 acres
VACANT SITES THAT COULD ACCOMMODATE AT LEAST A 10,000 S.F. NEW DEVELOPMENT(BUILDING + PARKING + LANDSCAPING)	13	21.7 acres
TOTAL OF ALL CATEGORIES	95	178.8 acres

With the information found in **Appendix B**, shown on **Map 5.0**, and summarized in **Table 10.0** staff is able to calculate the percentage of the City’s overall commercial/industrial acreage potentially available for adult uses as well as the number of sites potentially available in relation to the City’s population as follows.

TABLE 11.0: POTENTIAL ADULT USE AREAS & RELATIONSHIP TO POPULATION & ACREAGE

2015 POPULATION ¹	# SITES AVAILABLE FOR ADULT USES ²	RATIO
33,350	95	1 available site per every 351 people

CITY WIDE COMMERCIAL AND INDUSTRIAL ACREAGE ³	TOTAL ACREAGE AVAILABLE FOR ADULT USES ²	PERCENT
1,038	178.8	17.2%

¹ 2015 population: Office of Financial Management (2016, April 1). Population of Cities, Towns and Counties Used for Allocations of Selected State Revenues State of WA.

² See page 28, Map 5 and Appendix B of this report for this data

³ See page 14, Table 5.0, aggregate of C-2, C-L, M-1, and M-2 zones

TABLE 12.0: COMPARISON OF MOUNT VERNON ADULT ENTERTAINMENT USE AREAS TO OTHER JURISDICTIONS

JURISDICTION	RATIO OF SITES AVAILABLE FOR ADULT USES TO POPULATION	PERCENT OF JURISDICTION WIDE COMMERCIAL/INDUSTRIAL ACREAGE AVAILABLE FOR ADULT USES
Mount Vernon	1 available site per every 351 people	17.2%
Snohomish County ¹	1 available site for every 3,805 people	7%
San Diego County ¹	1 available site per every 6,911 persons	4.46%
City of Everett	1 available site per every 3,522 persons ^{2,3}	NA

¹ McKibben v. Snohomish County, 72 F. Supp. 3d 1190 (2014) – court case cites the ratio and percentages listed within this table

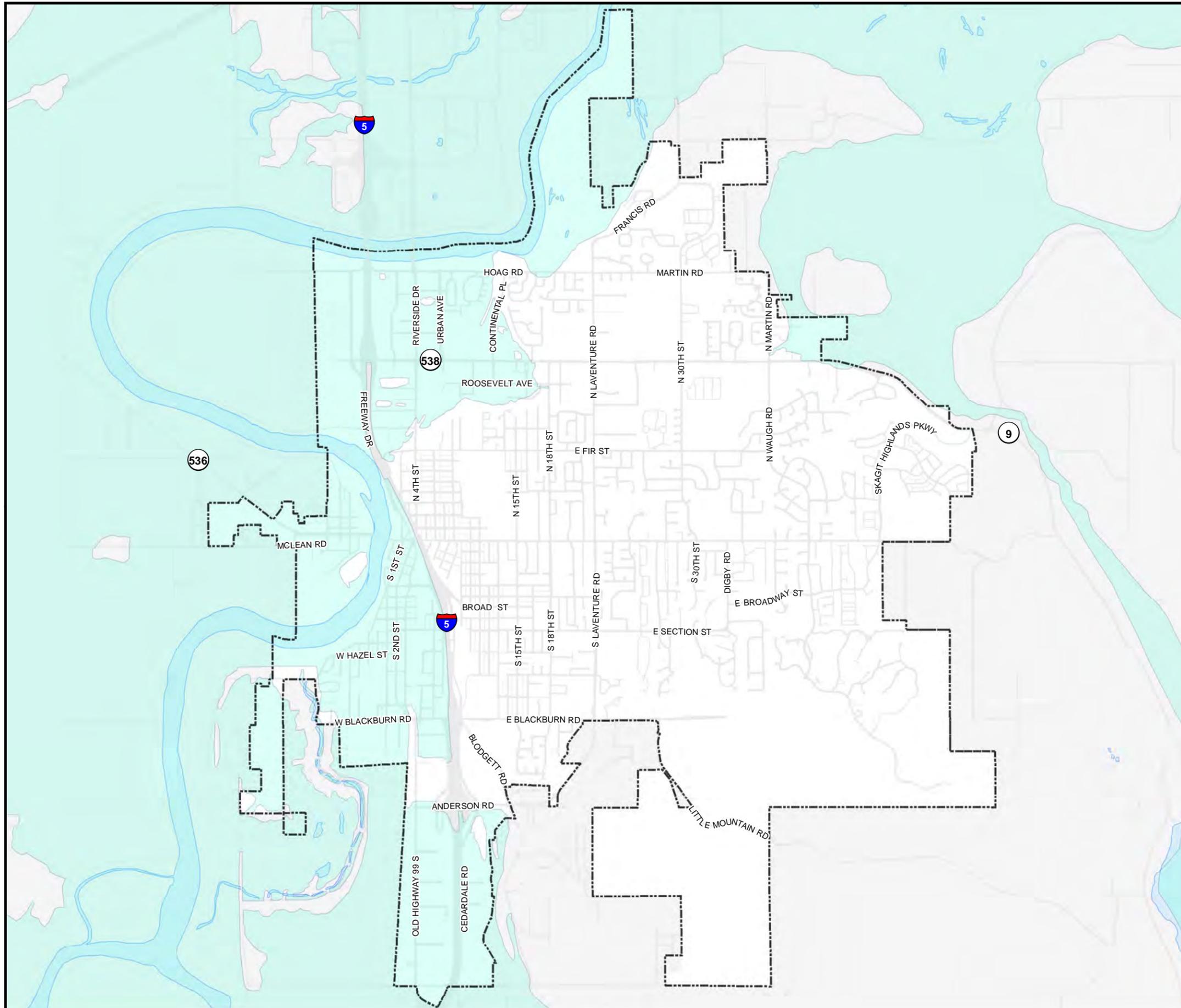
² Wallock v. City of Everett, Central Puget Sound Growth Management Hearing Board, WA State, Case No. 96-3-0025, Final Decision and Order. This case references the fact that Superior Court Judge Anita Farris made findings in the related Superior Court case including that she found there were 24 parcels of lots to choose from.

³ In 1996 when the above referenced Wallock v. City of Everett case (No. 96-3-0025) was heard by the Central Puget Sound Growth Management Hearings Board the population of the City of Everett was listed at 84,534 by the Office of Financial Management in their Intercensal Estimates of April 1 Population and Housing, 1990-2000.



"Adult Uses" Planning Study Map 6.0 FEMA 100-year Floodplain

- FEMA 100-yr Floodplain
- City Boundary
- Water Body



Map updated 10/25/2016 by MV GIS, Parcel data courtesy of Skagit County GIS
The City of Mount Vernon does not warrant, guarantee or accept any liability for the accuracy, precision or completeness of any information shown or described hereon or for any inferences made therefrom. Any use made of this information is solely at the risk of the

