

ORDINANCE NO. 3714

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, REPEALING INTERIM LICENSING AND ZONING REGULATIONS FOR ADULT ENTERTAINMENT USES ADOPTED IN ORDINANCE 3698, ADOPTING PERMANENT ADULT BUSINESS LICENSING REGULATIONS IN CHAPTERS 5.13 AND 5.06 OF THE MOUNT VERNON MUNICIPAL CODE AND ADULT BUSINESS ZONING REGULATIONS IN TITLE 17 (ZONING) OF THE MOUNT VERNON MUNICIPAL CODE; ADOPTING FINDINGS OF FACT JUSTIFYING ITS ACTION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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, pursuant to the GMA, Chapter 36.70A RCW, the City Council has adopted the City of Mount Vernon Comprehensive Plan and Title 17 MVMC, the City of Mount Vernon Zoning Code, for the areas within the City of Mount Vernon's Urban Growth Area; 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, as well as 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 inimical to the public health, safety, welfare, morals and economic vitality and growth of the community; and

WHEREAS, the evidence presented demonstrate 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, activities, and uses; 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 twenty seven percent (27%) of Mount Vernon's population is under the age of 18. The City Council finds a compelling government interest in the protection of minors from criminal and unlawful activities, and all adverse secondary effects, associated with adult entertainment businesses, uses and activities; 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 or is considered an Adult Retail Sales practice as defined in Ordinance 3698; and

WHEREAS, on October 26, 2016 at a regularly scheduled City Council meeting, the City Council declared an emergency and adopted immediate interim regulations by unanimous passage of Ordinance 3698 regulating adult entertainment businesses and employees and development permits thereto, or any land use activity or licensing involving adult entertainment providing for licensing regulations and siting for such uses adopting findings of fact and directing that City staff schedule the necessary public hearings as required by law within 60 days of the commencement of the ordinance; and

WHEREAS, the City Council conducted a public hearing on December 7, 2016, and adopted Ordinance 3705 that continued the moratorium for the period set out in Ordinance No.3698; and

WHEREAS, public notice of the City Council’s December 7th, 2016 hearing was published in the Skagit Valley Herald’s classified section on November 17, 2016 and provided during the Mayor’s report during a regularly scheduled and televised council meeting; and,

WHEREAS, pursuant to Ordinance 3698 and Resolution 920, the Mayor appointed the Adult Entertainment Zoning and Licensing Committee (the “Adult Entertainment Committee”) made up of citizens assisted by City staff to assist the City with recommendations in the adoption of permanent development and licensing regulation for adult entertainment pursuant to the City’s public participation program adopted under Resolution 491 as required under Washington State’s Growth Management Act (GMA); and

WHEREAS, the Adult Entertainment Committee held multiple meetings, conducted a comprehensive review of the City’s current adult entertainment regulations, zoning and licensing requirements, provided opportunity for public testimony and submission of written or other materials, reviewed submitted materials and studies by staff or members of the public regarding adult entertainment uses and their secondary impacts, discussed impacts of adult entertainment and proposed regulations with City staff, as well as other matters as reflected in the report of the committee and its attached documentation and returned a report and recommendations to the Planning Commission and City Council; and

WHEREAS, the recommendations of the Adult Entertainment Committee are reflected in the report and the proposed ordinance submitted to the Planning Commission; and

WHEREAS, following public notice, the City Planning Commission held the requisite public hearing on April 18, 2017 to consider the Adult Entertainment Committee’s recommendations; and

WHEREAS, following public notice and public hearing, the City Planning Commission considered all the materials, submitted records and files, and public testimony, and made a unanimous motion to recommend approve to the City Council of the draft ordinance and associated materials before them; and

WHEREAS, following public notice, the City Council held a public hearing on May 24th, 2017 at a regularly scheduled council meeting to consider both the Adult Entertainment Committee’s recommendations and the Planning Commission’s recommendations; and

WHEREAS, the City Council finds that it is necessary to adopt this ordinance to avoid secondary negative impacts to the citizens of Mount Vernon and the community-at-large from adult entertainment uses; and

WHEREAS, the City Council finds that the need to protect minors from unlawful activities and impacts associated with adult entertainment uses is a compelling governmental interest; and

WHEREAS, the City Council has studied the land use and other negative secondary impacts attributed to adult entertainment uses and has now prepared this ordinance to address these impacts; and

WHEREAS, The City of Mount Vernon is organized as an optional municipal code city, and is provided broad statutory home rule authority in all matters of local concern authorizing the City to take necessary and even unusual steps to respond to local needs. *See, e.g., Issaquah v. Teleprompter Corp.*, 93 Wn.2d 567, 575, 611 P.2d 741 (1980). Moreover, the City retains its "omnibus authority" providing Mount Vernon with all the powers which any city or any class may have consistent with the Constitution of the State and not specifically denied by law. RCW 35A.11.020. Generally, cities and towns have clear constitutional grant of legislative authority to make and enforce local police, sanitary or other regulations under Wash, Const. Article XI, Section 1 including authority to enact zoning laws and development regulations through their general police powers. Specifically this includes authority granted to the City of Mount Vernon pursuant to: i) Chapter 35A.63 RCW, and in particular RCW 35A.63.100, and ii) Chapter 35A.82 RCW and in particular 35A.82.020; and

WHEREAS, the requisite notice of adoption of the proposed amendments has been duly transmitted in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on March 20, 2017 and published on March 22, 2017 and no comments were received or appeals filed; and,

WHEREAS, the requirements for public participation in the development of the land use regulations of this ordinance as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and

WHEREAS, the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2); and,

WHEREAS, the proposed amendments are found to be in compliance with the State Growth Management Act.

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

SECTION ONE: FINDINGS AND CONCLUSIONS.

Based on the legislative record including all testimony and evidence presented in this matter a list of which is attached hereto, the City Council adopts the recitals set forth above and incorporated as if set forth fully herein as findings of fact justifying adoption of this Ordinance. In addition the Council reaffirms its adoption of findings in Ordinances 3698 and 3705 justifying enacting and confirming those interim controls and incorporates those findings (including their recitals) and the legislative records therein as if set forth fully herein.

Based on the legislative record including all testimony and evidence presented, the City Council adopts additional findings regarding the adverse secondary impacts of adult entertainment and uses as shown below:

A. Citizens Committees and Planning Commission Recommendations.

1. The City adopts the report, recommendation, and its associated materials completed by the Adult Entertainment Zoning and Licensing Committee and City Planning Staff attached hereto as **Exhibit 1** and incorporated as if set forth fully herein.
2. The City adopts the Planning Commission report and recommendation and its associated materials completed by the Planning Commission and City Staff attached hereto as **Exhibit 2** and incorporated as if set forth fully herein.
3. Without adoption of the permanent zoning and licensing regulations, adult entertainment and business uses can be sited or allowed to operate in a manner that results in well recognized, and well documented adverse secondary impacts set forth in the legislative record and the Adult Entertainment Zoning and Licensing Committee's report; and

B. General Findings.

1. The City Council finds that the adoption of permanent zoning and licensing regulations for adult entertainment and adult businesses (both terms are used interchangeably for the purposes of the recitals and findings) and sexually oriented adult entertainment uses are necessary to mitigate secondary, and cumulative negative impacts that are shown to happen and exist.
2. The City Council finds that the preservation of the public peace, health, safety, welfare, economic vitality and continued economic growth of the City will be harmed without regulating adult entertainment uses as proposed herein and that these regulations are a legitimate exercise of the City's police power.
3. The City of Mount Vernon's Comprehensive Plan is hereby adopted by reference and incorporated herein into the City's findings for this Ordinance.
4. The City finds that courts have allowed cities to rely upon the experiences of other jurisdictions and have not required each jurisdiction regulating businesses to conduct their own studies. The City has decided to also rely upon such other experiences, as recognized by the courts, because it believes it may not have the time, experience and/or resources to adequately study these issues. As such:
 - a. 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);
 - b. 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.

5. The City finds that evidence gathered from many difference sources confirms that adult entertainment uses, due to their nature, have generated: a) increases in crime; b) increases in public sexual conduct; c) increases in the opportunity for the spread of sexually transmitted diseases; d) increases in corruption of minors; and e) adverse impacts upon the aesthetics and property values of the surrounding neighborhoods and businesses.
6. The City finds that it is not the intent of the City to suppress any protected rights of expression under the United States or Washington Constitutions, but to propose and enact content neutral legislation that narrowly addresses the negative secondary adverse impacts associated with adult entertainment uses while allowing these types of businesses adequate alternative channels for communication of protected expression.
7. The City finds that this ordinance bears a substantial relation to public health, safety and welfare and promotes the best long term interests of the Mount Vernon community.
8. 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; and
 - 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.

9. The resources available for responding to problems associated with adult entertainment businesses are limited and are most efficiently and effectively utilized through appropriate zoning, licensing, and regulatory programs.

10. Construction is ongoing to complete the City's downtown flood protection project in 2017 which, once completed, shall remove large areas of the City's historic downtown from the 100 year FEMA regulated floodplain. This area, characteristics of many historic downtowns, is a tourist destination 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 and where families including children shop, live and play. Completion of the project will trigger an increase in interest and redevelopment of the City's historical downtown. Absent this ordinance restricting zoning of adult entertainment venues to commercial limited industrial districts, such development could include sexually oriented adult entertainment businesses to locate and conduct their businesses within this historic area.
11. 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:
 - a. Large annexations of property have occurred.
 - b. Significant changes to the City's comprehensive plan and development regulations have occurred including completion of its comprehensive plan review mandated under Washington State's Growth Management Act, RCW 36.70A.130 allowing greater mixed use zoning of commercial and single or multifamily residential uses in areas of the City (including but not limited to its historic downtown).
12. Without adoption of this ordinance permanent zoning regulations could allow adult entertainment uses to be sited near, adjacent, or within the same structures as single and multiple family dwellings.
13. 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.

C. Adverse secondary impacts related to crime.

1. Adult entertainment uses have a negative impact on law enforcement and are associated with increased rates of crime and complaints by the public.
2. As a result of increase in crime rates and complaints, law enforcement resources must be augmented and redirected to monitor adult entertainment uses to minimize criminal activity.

3. Adult entertainment uses are especially associated with and historically associated with higher incidents of criminal activity which include prostitution, lewd acts, other sex related crimes, narcotics and alcoholic beverage law violations, breaches of the peace such as assault and disorderly conduct, tax evasion, money laundering, and the presence within the industry of individuals with hidden ownership interests and individuals with outstanding warrants.

D. Adverse secondary impacts related to property values.

1. Adult entertainment uses have a negative impact on property values, especially the value of residential property.
2. Adult entertainment uses can adversely impact business investment in a neighborhood.
3. Customers of adult entertainment uses may use other businesses nearby and discourage regular customers of those businesses which can further discourage other business investment or reinvestment.
4. A community's image may be negatively affected by the location of adult entertainment uses in it. A positive image is a key part of maintaining property values.

E. Adverse secondary impacts related to quality of life/neighborhood degradation.

1. Experience in other cities has shown that a blighting effect is often experienced in communities where adult entertainment uses are located. This degradation and blighting effect is experienced by both residential and business communities.
2. The location of adult entertainment uses in a neighborhood attracts and increases criminal and civil law violations such as littering, urinating in public, trespass, disorderly conduct, lewd conduct, unlawful bus conduct, unlawful drug activity, impaired driving offenses, drug offenses, assault, prostitution, patronizing a prostitute, communication with a minor for immoral purposes, indecent exposure, noise ordinance violations, pedestrian interference, parking violations, malicious mischief, graffiti, and devalues property. These impacts cause other property owners to move, further contributing to blight and degradation of the neighborhood.
3. Live adult entertainment uses operate late at night which creates late night impacts of traffic and noise which are incompatible with residential uses.
4. Adult entertainment uses do not provide the sort of community business services desired or sought by residential communities. They do, however, for the reasons outlined in these findings, and the records and files contained the legislative records herein, contribute to neighborhood degradation and blight.

F. Adverse secondary impacts related to children.

1. Children are especially vulnerable to negative impacts from exposure to adult entertainment uses as their characters, mental state, and cognitive abilities are still in the process of formation.
2. Exposure to adult entertainment uses will often create conflict inimical with the moral and ethical standards parents desire to instill in children.

3. Exposure of children to adult entertainment uses can have serious negative impacts regarding children's development as mature, socially responsible adults.
4. Adult entertainment uses near religious facilities, schools, parks, and other facilities or areas, where children are likely to be found will increase the likelihood of these negative impacts.
5. The negative impacts on children of adult entertainment is of particular concern in the City of Mount Vernon where over 27% of the population is under 18 years of age.
6. Regulation of adult entertainment is necessary because in the absence of such regulation significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included illegal employment of minors.

G. Additional adverse secondary impacts.

1. Adult entertainment uses can have a negative impact on public health due to the danger of sexually transmitted diseases, increase in litter and trash, discarded drug paraphernalia and general unsanitary conditions.
2. Adult entertainment uses are inconsistent land uses in or near residential communities and mixed residential use communities for the reasons cited herein, including but not limited to, the negative impacts on increased crime, lowered property value, exposure of children, and the degrading and blighting effects on a neighborhood.
3. Adult entertainment uses are inconsistent land uses in business districts and commercial districts which are near or serve residential communities for the reasons cited herein, including but not limited to, the negative impacts on increased crime, lowered property value, exposure of children, and the degrading and blighting effects on a neighborhood.
4. The goals of preserving neighborhood character, quality, and viability are adversely affected by the presence of adult entertainment uses.

H. Conclusions/Additional Findings.

Based on the findings contained herein, and the reports, records, testimony and evidence presented to the Council including but not limited to evidence and testimony presented at the Planning Commission and Adult Entertainment Committee below, the Council makes the following additional findings:

1. The City finds it is necessary to limit exposure adult entertainment related uses to children and that limiting adult entertainment uses to the Commercial-Limited Industrial zoning district identified herein, in areas where minor children and families are not likely to congregate or be present is necessary to mitigate secondary negative impacts. The City finds that other zoning districts that permit similar commercial uses are pre-developed areas within the City predominately characterized by retail uses (e.g. large grocery and hardware stores, superstores), retail services (e.g. restaurants, beauty shops), recreational uses (e.g. fitness clubs, bowling alleys), and pedestrian routes (e.g. trails and sidewalks) attracting a variety of persons including both families and minor children.

2. 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.
3. Specific forms of adult entertainment and business require specific regulations to address the adverse secondary impacts and partially mitigate their impact on the community. The Adult Entertainment Committee and Planning Commission reviewed the various adult entertainment and business uses and based on the evidence presented to them proposed regulations to address negative secondary impacts of various adult entertainment businesses to which this Ordinance substantially complies.
4. 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.
5. It is necessary to have a licensed manager on the premises of establishment offering adult entertainment 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.
6. It is necessary to license entertainers and employees of adult businesses in the adult industry to prevent the exploitation of minors; to ensure that each such entertainer is an adult to detect and discourage the involvement of organized crime and other crimes related to the adult entertainment industry, and to ensure that such entertainers have not assumed a false identity which would make regulation of the entertainer difficult or impossible.
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 backgrounds of employees in adult businesses, entertainers in adult clubs, and all owners and managers.
8. Areas within close walking distance of single and multiple family dwellings increase the likelihood of exposure of such uses to children, degradation of the quality of life in the neighborhood and diminishing property value and should be free of exposure to adult entertainment land uses and their secondary impacts.

- 9.** 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 where children would likely be present.
- 10.** 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.
- 11.** The record, including data and studies provided by staff and/or consultants to the Council, identify areas within the City of Mount Vernon appropriate for location of adult entertainment businesses and land uses to offer adult businesses a reasonable opportunity to open and operate within the city. These studies and data establish sufficient number of proposed sites of potentially and reasonably available property for adult entertainment businesses to open and operate sufficient to meet existing, demonstrated demand and projected need for adult entertainment venues for the City's population and projected population.
- 12.** In an undercover operation in 1995, police officers entered the Déjà vu adult entertainment establishment in Federal Way, Washington over an approximately five (5) month period. Approximately 24 criminal violations were charged for acts occurring while officers were inside the Déjà vu. Police officers repeatedly observed managers ignoring criminal law violations committed inside Déjà vu, within a short distance from the manager. Managers would look at the patrons/officers while criminal violations were committed by the entertainers. Entertainers continuously violated the Federal Way City Code. There have been numerous instances where entertainers masturbate the patrons and where the entertainers, without invitations, press their vaginas on the genital area and mouths of patrons, including undercover officers.
- 13.** During the period of July, 1995 and March, 1996, police undertook an investigation of Honey's adult entertainment establishment in Snohomish County, Washington. Approximately 90 criminal violations were charged for acts occurring while undercover officers were inside Honey's. Entertainers continuously violated the Snohomish County Code. In 63 cases the suspects exposed their breasts, in 58 cases the suspects exposed their vaginal area, in 79 cases the suspects' breasts were put upon the face, neck or chest of the undercover officer, in 63 cases the suspects' hands, heads or breasts were placed in contact with the groin of the undercover officer, in 95 cases the suspects sat in the lap of the undercover officer and made a grinding motion, in 45 cases the suspects touched the undercover officer's groin with their leg or knee, and in 13 cases the suspects' rear ends or vaginas were placed near the face of the undercover officer.

14. That local law enforcement in Snohomish County including Everett Police have received numerous complaints of civil and criminal violations of adult business establishments known as bikini baristas. Upon investigation, law enforcement and prosecutors charged bikini baristas for acts occurring while employed as bikini baristas including, prostitution, lewd conduct, indecent exposure, and violations of local adult cabaret laws. In addition, owners/operators of bikini barista business were charged with and plead guilty to promoting prostitution and money laundering. In 2012, undercover newsgathering agency KOMO news witnessed baristas at several locations baring their breasts and flashing their genitals in exchange for tips. In 2013, a bikini barista was the subject of armed robbery of a barista tip jar money. An Everett Police investigation of bikini barista's also resulted in the arrest and charge of felony promoting prostitution and official misconduct of a Snohomish County Sheriff Sergeant for tipping off and warning baristas about undercover officers and vehicles they used in exchange for sex acts and sex shows.
15. Proximity between entertainers and patrons during adult entertainment performances can facilitate sexual contact, prostitution, and related crimes and increase the chance of unwanted, harmful or offense touching (i.e. assault). Concerns about crime and public sexual activity are legitimate and compelling concerns of the City which require reasonable regulation of adult entertainment establishments in order to protect the public health, safety and general welfare. To prevent sexual conduct and minimize the risk of assault 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.
16. 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.
17. Hidden ownership interests for the purposes of skimming profits and avoiding the payment of taxes have historically occurred in the adult entertainment industry in the absence of regulation. These hidden ownership interests have historically been held by organized and white collar crime elements. In order for the City to effectively protect the public health, safety, morals, and general welfare of its citizens and effectively allocate its law enforcement resources it is important that the City be fully apprised of the actual ownership of adult entertainment establishments, and identities and backgrounds of persons responsible for management and control of the adult entertainment establishment.
18. The City conducted a planning report with appendices, dated April 3, 2017 providing land use and buildable lands analysis to study where there may be reasonable opportunities for sexually oriented adult businesses to locate while minimizing secondary impacts to such uses identified as item **Exhibit 3** in the City's Legislative Record and adopts the study as further support of this Ordinance.

SECTION TWO. PLANNING COMMISSION RECOMMENDATION ADOPTED. The City Council adopts the Planning Commission's findings of fact and conclusions of law in their entirety.

SECTION THREE. CITY COUNCIL OPEN RECORD PUBLIC HEARING. At the City Council's open record public hearing held on May 24, 2017 the Council made a unanimous motion to approve this Ordinance with the following three (3) additional items added to the legislative record:

1. Exhibit 24: Illustrations for use with the City's Adult Entertainment Regulations (MVMC Chapters 5.06, 5.13, and 17.72 and Illustrations for use with the City's Lewd Conduct Regulations (9.19). This is a two page document.
2. Within Exhibit 1 the signature page of the Adult Entertainment Zoning and Licensing Committee's report is being replaced with a signature page containing the signatures of all the Committee members. This is a one page document.
3. Exhibit 23 will have one additional public comment added to it from Rachel Porter, dated May 22, 2017. This is a one page document.

SECTION FOUR. 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.**
- 5.06.117 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.**

In the event of any conflict or inconsistency between this Chapter and the general provisions contained in Chapter 5.04 MVMC, this Chapter shall govern as applied to the licenses required under this Chapter unless specified otherwise in 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. "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.
- J. "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.
- K. "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.
- L. "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.
- M. "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 within this Chapter, 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 applicant or applicant control person shall be investigated according to the provisions outlined in MVMC 5.04.047 and comply with the application procedures outlined in MVMC 5.04.042.
- E. 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.
- F. 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 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 30 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.
- G. Within 30 days of receipt of a fully completed application for an adult entertainment dance studio license and payment of the fee, unless an extension is requested pursuant to MVMC 5.04.042 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, Chapter 5.04 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
- H. An adult entertainment dance studio license shall expire on December 31 of the year in which it is issued.
- I. An adult entertainment dance studio license shall not be issued to any person under the age of 18 years.
- J. 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.
- K. A license issued to an adult entertainment dance studio is not transferable to any person, entity or to any other business or property.
- L. It is the responsibility of the licensee issued a license under this section to keep the information on the license current at all times.
- M. 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.

A. 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.

B. 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 prepared and made available by the licensing authority, which forms may be revised from time to time.
- 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 as set out in MVMC 5.04.045 J.
- E. Each application shall be accompanied by a non-refundable fee as provided in MVMC 5.06.050 E. The fee shall not be prorated.

- F. Upon receipt of a completed application for a manager's or adult entertainer's license, payment of fees, 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 E, 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 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.
- B. 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.
- C. 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.
- D. No person under the age of 18 years shall be admitted to an adult entertainment dance studio.
- E. An adult entertainment dance studio shall be closed between 2:00 a.m. and 8:00 a.m.
- F. 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.
- G. An adult entertainment dance studio license issued pursuant to this chapter shall be conspicuously displayed at the place of businesses during normal business hours.
- H. Manager and adult entertainer licenses issued pursuant to this chapter shall be maintained on the premises of the business during normal business hours.

- I. 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.010 as now or hereafter amended or display of sexually explicit material in violation of RCW 9.68.130.
- J. 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 and Cannabis 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 THE CITY OF MOUNT VERNON. 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 A 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 --.

- 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, development services 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 civil penalties 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 knowingly 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 knowingly 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 FIVE. 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
- 5.13.110 Severability

5.13.005 General provisions.

In the event of any conflict or inconsistency between this Chapter and the general provisions contained in chapter 5.04 MVMC, this Chapter shall govern as applied to the licenses required under this Chapter unless specified otherwise in 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/use" 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.
- 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 be investigated according to the provisions outlined in MVMC 5.04.047 and comply with the application procedures outlined in MVMC 5.04.042.

5.13.035 Photograph required.

Applicants seeking an employee or manager license as required by this chapter shall submit photographs as specified in MVMC 5.04.045 J.

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, development services 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 city 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 City 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. 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 this Chapter, 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 civil penalties 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.

5.13.105 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 constituting a lewd act, 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 SIX. That a new section 17.72.140 of the Mount Vernon Municipal Code is hereby created which section shall read as follows:

17.72.140 Adult entertainment uses.

Adult entertainment uses must meet the following requirements:

- A. Adult entertainment dance studios, adult businesses, panorams and all uses subject to licensing requirements under Chapter 5.06 MVMC, Chapter 5.13 MVMC, and Chapter 5.56 MVMC, are permitted to be located only within the area identified on the “Adult Entertainment Overlay Zone Map” that is attached labeled as **Exhibit 4** attached hereto and made part of these regulations.
- B. Violation of the use provisions of this section is:
 - 1. Declared to be a public nuisance per se, which may be abated by the city 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.
- C. 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.
- D. The definitions found within MVMC 5.06.020, Definitions; MVMC 5.13.010, Definitions, and MVMC 5.56.010 Definitions are hereby incorporated by reference into this section of the MVMC.
- E. Security Requirements. Adult entertainment dance studios, adult businesses, panorams and all uses subject to licensing requirements under Chapter 5.06 MVMC, Chapter 5.13 MVMC, and Chapter 5.56 MVMC allowing the public into a building or structure shall be subject to the following security requirements.

1. At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows.
2. Surveillance Systems. At a minimum, the business shall have a video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement shall allow for the clear and certain identification of any person and activities in all parking lot areas, rear alley areas immediately adjacent to the business, the main building entrance(s) and exit(s), and any and all cash registers or cash offices on the premises of the adult business.. All cameras must record from one full hour before to one full hour after the adult business is open to the public, or any portion thereof and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any City employee or law enforcement officer, and must be copied and provided to the City or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.
3. Areas provided for off-street parking, areas surrounding buildings, and entrances shall be well lit with illumination devices directed to ensure that surveillance system(s) capture all vantage points of the building and off-street parking areas utilized by those frequenting the adult entertainment business or use.

F. Nonconforming Use.

1. The nonconforming use provisions set forth in Chapter 17.102 MVMC of this title shall not apply to adult entertainment dance studios, adult businesses, panorams and all uses subject to licensing requirements under Chapter 5.06 MVMC, Chapter 5.13 MVMC, and Chapter 5.56 MVMC known collectively as “adult use businesses”. For purposes of this title, a “nonconforming adult use business” constitutes an adult use business which lawfully exists as an adult use business which receives nonconforming status by virtue of an order from a court of competent jurisdiction, or which lawfully existed as an adult use business prior to a change in the zoning which change does not permit the adult use business in its existing location and is maintained as an adult use business although it does not comply with the adult entertainment and adult business zoning requirements set forth in this title, or is an adult use business which lawfully existed prior to annexation by the city and is maintained after the effective date of annexation and does not comply with the adult entertainment and adult business zoning requirements set forth in this title.

2. Adult use businesses which are nonconforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a nonconforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a nonconforming adult use business, or upon the sale of the nonconforming adult use business, whichever occurs first. Adult use businesses which are nonconforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such nonconforming adult use businesses shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:
 - a. Extension of a nonconforming adult use business to any building or other structure or land area other than one occupied by such use as of the date of becoming a nonconforming adult use business.
 - b. Extension of any specific type of nonconforming adult use business within a building or other structure to any portion of the floor area that was not occupied by that same type of adult use business as of the date of becoming a nonconforming adult use business.
 - c. Operation of a nonconforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a nonconforming adult use business.

Any change in a nonconforming adult use business shall be to a use which is legally permitted within the zone in which it is located. In the event a nonconforming adult use business, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult use business cannot thereafter be used or reused for any type of adult use business. In the event a nonconforming adult use of a building or structure is vacated, closed or abandoned for a period in excess of six months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located.

Repairs and alterations to a nonconforming adult use business building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.

A building or structure containing a nonconforming adult use business which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed the value of the building or structure at the time of such damage. Restoration of a structure or building housing a nonconforming adult use business or moneys used therefor shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subsection F.3 of this section.

3. In the event a nonconforming adult use business determines that the period set forth in subsection F.2 of this section does not provide the adult use business with a reasonable period of amortization, then no later than one hundred eighty days prior to the expiration of the period, the nonconforming adult use business shall make application to the city land use hearing examiner for an extension of time. Accompanying the application shall be a fee in the amount of two hundred fifty dollars and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the examiner shall determine whether or not the harm or hardship to the nonconforming adult use business outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the examiner shall be in accordance with the review process as described in Chapter 14.05 MVMC as a Type III Variance Permit process.
 4. Within thirty calendar days of becoming a nonconforming adult use business, the nonconforming adult use shall provide the City's Planning Director with copies of its current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a nonleasehold interest, the city's planning director shall be provided other documents which show record of ownership.
- G. 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 SEVEN. 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 EIGHT. 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 NINE. REPEALER. The following Ordinances shall be repealed in their entirety only after this Ordinance is in full effect and force by operation of law as set forth in Section 11 of this Ordinance.

A. Ordinance No. 3698, passed and approved on October 26, 2016.

Entitled:

**AN ORDINANCE OF THE CITY OF MOUNT VERNON,
WASHINGTON, ENACTIN 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**

B. Repeal shall not revive ordinances.

The repeal of an ordinance shall not repeal the repealing clause of an ordinance or revive any ordinances which have been repealed thereby.

SECTION TEN. FINAL ORDINANCE. City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical error, errors in referencing documents, scrivener's error, and other similar types of corrections.

SECTION ELEVEN. SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION TWELVE. SAVINGS. All ordinances repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance.

SECTION THIRTEEN. This ordinance shall be in full force and effect five days after its passage, approval, and publication as provided by law.

PASSED AND ADOPTED by the City Council of the City of Mount Vernon at a regular meeting thereof this 24th day of May 2017.

SIGNED AND APPROVED this _____ day of May, 2017.

Doug Volesky , Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Published _____

LEGISLATIVE RECORD ADOPTED WITH ORDINANCE 3714

EX.#	Document(s) From:	Document(s) Title:	Docoument(s) Date(s):	Beginning Bates #:	Ending Bates #:
1	Adult Entertainment Zoning and Licensing Committee	Adult Entertainment Advisory Committee Report	4.18.17	MV000100	MV000344
1.1	City of Amarillo	A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo	9.12.77	MV000345	MV000365
1.2	City of Austin	Report on Adult Oriented Businesses in Austin	5.19.86	MV000366	MV000417
1.3	City of Bellevue	Location of Adult Entertainment Uses	1.11.88	MV000418	MV000509
1.4	Blaine Police Department	Blaine Book Company Memorandum with Allegations of Rape and Solicitation of a Minor for Prostitution	9.8.98	MV000510	MV000513
1.5	City of Des Moines	Des Moines Adult use Study	8.84	MV000514	MV000595
1.6	City of Everett, Crime Analysis Unit	Report on Crime at Existing Adult Retail Businesses	10.18.04	MV000596	MV000683
1.7	City of Garden Grove	The Relationship Between Crime and Adult Business Operation on Garden Grove Boulevard	10.23.91	MV000684	MV000778
1.8	City of Federal Way	Legislative record	1995	MV000779	MV000794
1.9	City of Indianapolis	Adult Entertainment Businesses in Indianapolis	1984	MV000795	MV000882
1.10	Town of Islip	Study and Recommendations for Adult Entertainment Businesses in the Town of Islip	9.23.80	MV000883	MV000986
1.11	City of Kelso	Memo Regarding Zoning for Sexually Oriented Businesses	4.12.93	MV000988	MV000993
1.12	City of Kent	Adult Use Zoning Study	11.82	MV000994	MV001038
1.13	City of Los Angeles	Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles	6.77	MV001039	MV001146
1.14	Times Square Business Improvement District	Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area	4.94	MV001147	MV001203
1.15	New York	Adult Entertainment Study	11.94	MV001204	MV001294
1.16	City of Olympia	Legislative Report on Zoning Regulations of Adult Oriented Businesses	Varies Primarily 1997	MV001295	MV001358
1.17	City of Saint Paul	Adult Entertainment – a 40 acre Study	1987	MV001359	MV001422
1.18	City of Spokane	Declarations from Karen Rel, Dr. Joseph Asterino, Ron Hansen, and Joseph C. Books; also testimony from Karen Roberts to the City Planning Commission	2002	MV001423	MV001441
1.19	City of Renton	Declaration of Marilyn Petersen (City Clerk for the City of Renton) submitting exhibits given to the Renton City Council from Phillip Beckley	1998	MV001442	MV001447
1.20	City of Federal Way	Declaration of Londi Lindell, City Attorney of Federal Way, submitting photographs from a magazine found by Bob Evans, discarded in a parking lot of an Adult Retail Establishment.	1999	MV001449	MV001466
1.21	Spokane County	Declaration of Patricia C. Walker, Special Deputy Prosecuting Attorney for Spokane County, submitting copies of items citizens have found near adult entertainment facilities and testifying to negative secondary impacts	Varies 1999 and 1994	MV001467	MV001474
1.22	City of Garden Grove	Declarations from Herbert Hall (customer of adult book stores), Officer Ricardo Bermudez, Officer Todd Elgin, Officer Gary Faust, Officer Mark Hutchinson and Declarations from the following persons describes as neighbors of A-Z Bookstore: Sherilyn Duarte, Lam-Son Trinh, Mr. and Mrs. Ron Foster, Erin K. Davis, Gary Adamson, Joe and Vera Moralez, Joe Keohane, and Buddy Allred, J. Gaynor	Varies Primarily 1989	MV001475	MV001540
1.23	City of Bellevue	Declaration from Officer DeVore regarding incident with suspects that met at R & R Adult Toys store.	4.16.98	MV001541	MV001542
1.24	Time.com	Canada Stripping Visas for Foreign Strippers	7.8.12	MV001543	MV001544
1.25	Chron.com	Human Trafficking, Drug Activity at Treasures Strip Club, Alleged by Prosecutors	5.16.12	MV001545	MV001547
1.26	WBTW.com	Prostitution and Strip Clubs Often Linked to Human Trafficking, Duputies Say	5.8.15	MV001548	MV001550
1.27	WBALTV.com	3 Baltimore Strip Clubs Raided in Human Trafficking Case	6.26.15	MV001551	MV001556
1.28	Huffingtonpost.com	Where Strip Clubs Thrive in Portland, So Does Child Sex Trafficking	6.25.15	MV001557	MV001565
2	City of Mount Vernon	Planning Commission Public Hearing Materials	4.18.17	MV001566	MV001646
3	City of Mount Vernon	Land Use and Buildable Lands Analysis	4.3.17	MV001647	MV001871
4	City of Mount Vernon	Adult Entertainment Overlay Zone Map	5.24.17	MV001872	MV001872
5	City of Seattle	Director's Report Adult Cabarets	3.89	MV001873	MV001885
6	City of Seattle	Director's Report Adult Entertainment	8.89	MV001886	MV001914
7	City of Saint Paul	Adult Entertainment Staff Report	4.88	MV001915	MV001944
8	McCleary, Richard	Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office	2.28.04	MV001945	MV001953
9	Lindell, Londi	Adult Entertainment Legislative Record	1995	MV001954	MV001969
10	McCord, Eric and Tewksbury, Richard	Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis	Unknown	MV001970	MV001987
11	City of Seattle	Director's Report on Adult Cabarets in Seattle	3.28.06	MV001988	MV002005
12	Keuhl, David and Wilson, Shawn McCleary, Richard	Secondary Effects of Sexually-Oriented Businesses on Market Values and Secondary Effects of "Off-Site" Sexually-Oriented Businesses	6.08	MV002006	MV002101
13	Everett Adult Use Citizen Committee	Adult Use Citizens Committee Report to City Council on the Zoning of Adult Use Businesses	7.3.86	MV002102	MV002164
14	City of New Orleans	Adult Live Performance Venues Study	9.6.16	MV002165	MV002265
15	Donnerstein, Edward and Linz, Daniel	Final Report of the Distance and Message Effectiveness Study	3.18.96	MV002266	MV002314
16	Police Department Incident Calls	Incident Calls at Foxy Lady (2626 Henson Road, Mount Vernon) 2011 to 2016 Incident Calls for Foxy Lady (9566 Old Hwy 99 North, Burlington) 2010 to 2015 Incident Calls for Sips Ahoy (7607 Sr 20, Anacortes) 2012 to 2016	See Descriptions in column to the left	MV002315	MV002318

LEGISLATIVE RECORD ADOPTED WITH ORDINANCE 3714

17	Various New Outlets	<p>Foxnews.com: Bare-Chested Baristas May Soon be Outlawed in Washington City, 4.12.2017</p> <p>NYDailynews.com: Coffee Madam Laundered \$2 Million Through Wash. Bikini Baristas, 8.30.2014</p> <p>Everett Herald: Former Cop Accused of Misconduct with Bikini Baristas (8.2.2014)</p> <p>Everett Herald: Bikini Barista Stand Manager Pleads Guilty to Promoting Prostitution (6.3.2015)</p> <p>KOMO news: Confessed Coffee Stand Madam Avoids Jail Time in Sentencing (1.11.2016)</p> <p>NBC News: Three Bikini Baristas ARrested at Washington Espresso Stand (10.30.2013)</p> <p>KHQ: 5 Everett Binini Baristas Accused of Prostitution (9.25.2009)</p> <p>KOMO News: Cop Accused of Tipping Bikini Baristas to Police Intestigations (6.25.2013)</p>	Varies	MV002319	MV002340
18	Snohomish County Legislative Record	Comments	Varies	MV002341	MV002807
19	Snohomish County Legislative Record	Materials from the Record	Varies	MV002808	MV003179
20	Federal Way Legislative Record	Materials from the Record	Varies	MV003180	MV003473
21	Incident Calls and Booking Records from Various Agencies	Records	Varies	MV003474	MV003541
22	Declaration of Edward Donnerstein	Declaration of Edward Donnerstein	3.26.96	MV003542	MV003552
23	Public comments		Varies	MV003553	MV003559
24	City Staff	Illustrations for use with the City's Adult Entertainment Regulations (MVMC Chapters 5.06, 5.13, and 17.72 and Illustrations for use with the City's Lewd Conduct Regulations (9.19)	NA	MV003560	MV003561



Exhibit 4 Zoning Overlay Allowing Adult Entertainment Uses

-  Uses/Businesses Can Be Permitted
-  CITY

Located within a portion of:
 E half of Section 31, Township 34 N, Range 04 E,
 NW quarter of Section 5, Township 33 N, Range 04 E,
 W half of Section 32, Township 34 N, Range 04 E

