

ORDINANCE NO. 3775

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, AMENDING PORTIONS OF TITLE 17, ZONING, WITHIN CHAPTERS 17.51 COMMUNITY COMMERCIAL DISTRICT, 17.54 NEIGHBORHOOD COMMERCIAL DISTRICT, 17.69 PLANNED UNIT DEVELOPMENTS, 17.90 SITE PLAN REVIEW, 17.102 NON-CONFORMING BUILDINGS OR USES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, several chapters within the Zoning Code (Title 17) need to be amended to correct discrepancies, achieve consistency with Chapter 14.05, Procedures, and to implement Comprehensive Plan Goals, Objectives, and Policies; and

WHEREAS, the Department of Commerce was notified of the proposed amendments on November 30, 2018, an acknowledgement was received from Commerce on December 3, 2018, and Commerce granted the City expedited review on December 22, 2018 (their identification number: 25553); and as such, the City is in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on December 3, 2018 and published on December 6, 2018 and no comments were received or appeals filed; and,

WHEREAS, on January 15, 2018 the Planning Commission held an open record public hearing and forwarded their recommendation on the subject code amendments to the City Council for consideration at their open record public hearing held on January 23, 2018; and

WHEREAS, the requirements for public participation in the development of this amendment 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 ensure that the City's municipal code is internally consistent.

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

SECTION ONE. RECITALS INCORPORATED. That the City Council adopts the recitals set forth above as findings justifying adoption of this Ordinance and incorporates those recitals as if set forth fully herein.

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

A. Planning Commission’s Findings of Fact:

1. The procedural requirements outlined in MVMC Chapter 14.05, Procedures, have been satisfied by City staff. This includes the Notice of Public Hearing, the environmental review pursuant to the SEPA statute, and receiving expedited review from the State Department of Commerce.

B. Planning Commission’s Conclusions of Law:

1. The proposed amendments ensure that the City’s development regulations are internally consistent.
2. The requirements for public participation in the development of this amendment 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.
3. The proposed amendment is found to be in compliance with the State Growth Management Act.

C. Planning Commission Recommendation to the City Council:

At their public hearing on January 15, 2019 after review of the materials presented by City staff and holding a public hearing the Planning Commission made a unanimous motion to approve the ordinance presented by staff.

SECTION THREE. Section 17.51.040, Conditional Uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.040 Conditional uses.

Uses permitted by conditional use permit, and classified as a Type III permit in the C-3 district, are as follows:

A. Multifamily developments, subject to the following:

1. The multifamily use shall not be constructed on the ground floor; and the ground floor uses shall include one or more of the Permitted Uses listed in 17.51.020.
2. The multifamily uses must be built at the same time or following the non-residential ground floor uses.
3. The multifamily uses shall comply with the setbacks and building height requirements of this Chapter and the following requirements:
 - i. Minimum distance between buildings: 10 feet
 - ii. Density requirements: Unrestricted.
 - iii. Design Standards: Requirements found in Chapter 17.70 MVMC for multi-family uses.
 - iv. Parking requirements: Requirements found in Chapter 17.84 MVMC for multi-family uses.
 - v. Signage requirements: Requirements for residential uses found in Chapter 17.87 MVMC.
 - vi. Landscaping requirements: Requirements for R-3 zones found in Chapter 17.93 MVMC.

B. Churches; provided, that their principal access is from a collector street or greater and they shall conform to all the development standards and requirements of the public (P) zone and concurrent with approval the city shall require both the comprehensive plan and zoning designations to be changed to public (P) during the city’s next comprehensive plan amendment cycle. (Ord. 3714 § 8(C), 2017; Ord. 3429 § 101, 2008).

SECTION FOUR. Section 17.51.060, Setbacks, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.060 Setbacks.

Minimum setback requirements in the C-3 district are as follows:

A. Front yard: 10 feet. Buildings on corner lots and through lots shall observe the minimum setback on both streets. For properties that front on an arterial, the minimum setback from the right-of-way shall be 25 feet. The community and economic development and public works directors can through a Type I decision process administratively reduce, for good cause shown, this setback;

B. Side yard and rear yard: none, except along any property line adjoining a residentially zoned district or use, with no intervening street or alley, there shall be a setback of at least 10 feet when adjoining a multi-family district or use and 20 feet with adjoining a single-family district or use.

SECTION FIVE. Section 17.51.070, Building height, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.070 Building height.

Maximum building height shall be four stories, but not more than 50 feet. These maximum limits may be increased to six stories or 65 feet if parking is provided beneath the habitable stories. Uninhabitable stories such as a church spire, fleche, campanile, nave, a dome and lantern or a clock tower may be permitted to exceed the height limit provided such structures are not intended as advertising devices. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION SIX. Section 17.54.020, Application, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.020 Application.

A. Such districts are to be located only where they clearly serve daily needs of residents in the surrounding area and where uses are not in existence or are desirable.

B. Each district may not exceed three acres in total area.

C. Property that was zoned C-4 on or before June 26, 2013 shall have the option of using the zoning regulations found in this Chapter; or they can use the zoning regulations codified in Chapter 17.51, Community Commercial District (C-3), with the following limitations:

1. Buildings abutting single-family zones or uses shall be required to comply with the height limits specified in this chapter.

2. Applicants will not be allowed to mix regulations from the C-3 and C-4 districts; they must pick one district or the other and comply with all of the regulations from the district they choose.

D. Such districts may only be located within new planned developments that are created using the city's planned unit development (PUD) process that is codified within Chapter 17.69 MVMC.

SECTION SEVEN. Section 17.54.040, Conditional Uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.040 Conditional uses.

Uses permitted by conditional use permit and classified as a Type III permit in the C-4 district are as follows:

A. Multifamily developments, subject to the following:

1. The multifamily use shall not be constructed on the ground floor; and the ground floor uses shall include one or more of the Permitted Uses listed in 17.54.030.

2. The multifamily uses must be built at the same time or following the non-residential ground floor uses.

3. The multifamily uses shall comply with the setbacks and building height requirements of this Chapter and the following requirements:

vii. Minimum distance between buildings: 10 feet

viii. Density requirements: Unrestricted.

ix. Design Standards: Requirements found in Chapter 17.70 MVMC for multi-family uses.

x. Parking requirements: Requirements found in Chapter 17.84 MVMC for multi-family uses.

xi. Signage requirements: Requirements for residential uses found in Chapter 17.87 MVMC.

SECTION EIGHT. Section 17.69.090, Modification of permitted uses – Commercial Uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.69.090 Modification of permitted uses – Commercial uses.

A. A planned unit development may allow commercial uses in residential zones which are not otherwise permitted in the underlying use zone only under the following circumstances:

1. The use shall be part of a planned development in which not more than 10 percent of the gross floor area of the residential units (both single-family and multifamily) is devoted to a commercial use which is not otherwise permitted in the underlying use zone. For example, if a 100-unit development contained homes that all had a gross floor area of 2,000 square feet, a commercial use that was no larger than 20,000 square feet could be permitted. In measuring the square footage of the commercial use all features such as setbacks, access, parking and landscaping shall be included.
2. The use shall be supportive of and/or complementary to the other uses within a planned development and scaled to meet primarily the needs of the inhabitants of the project.
3. The use shall be compatible with the uses permitted on other properties in the surrounding area.
4. There is public benefit to be realized by allowing the proposed use.

B. Basis for Approval of Commercial Uses in Residential PUDs. Commercial uses may be located within the planned unit development when the proposed development includes residential use as an integral component of the planned development and when commercial uses are situated and developed in such a manner as to be compatible with any residential uses that are existing or which could be developed in the adjoining residentially zoned area.

C. In proposing a commercial use in a residential zone, the applicant shall establish specific community economic need for the use and facilities. The Director of Development Services shall require a competent market analysis to demonstrate that need.

D. Building permits for commercial uses in residential PUD zoning districts may not be issued until at least two-thirds of all the proposed single-family detached residential units are completed, including issuance of final certificates of occupancy.

E. The commercial use shall meet the dimensional requirements applicable to the C-4 zoning district (setbacks, landscaping, parking, etc.).

SECTION NINE. Section 17.90.020, Committee Membership, of the Mount Vernon Municipal Code is hereby repealed.

SECTION TEN. Section 17.90.040, Procedure, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.040 Procedure.

Those applying for site plan approval shall submit all of the materials required in Chapter 14.05 MVMC. Chapter 14.05 MVMC classifies Site Plan approvals as Type I permits and they shall be processed as such.

SECTION ELEVEN. Section 17.90.050, Committee Review, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.050 Site Plan review.

Applications shall be reviewed consistent with the procedural requirements found in Chapter 14.05 MVMC to ensure compliance with the purpose and intent of this chapter. The city may do the following:

- A. Approve the application as submitted;
- B. Approve the application with conditions;
- C. Continue consideration of the application until the next regularly scheduled meeting to allow the applicant to provide additional information;

D. Table the application to allow the applicant to further refine or redesign the project to meet city criteria; or
E. Disapprove the application as submitted. Approval of the application means that the applicant can then seek the issuance of a building permit. (Ord. 2352, 1989).

SECTION TWELVE. Section 17.90.060, Appeals, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.060 Appeals.

In the event that an application is conditionally approved or disapproved, the applicant may appeal the decision to the hearing examiner. Such appeal shall follow the appeal procedures in Chapter 14.05 MVMC and must be accompanied by a fee as set forth in Chapter 14.15 MVMC. (Ord. 3429 § 152, 2008).

SECTION THIRTEEN. Section 17.90.080, Preliminary site plan review, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.080 Preliminary site plan review.

Prior to applying for site plan review, a developer may file a request for a preliminary site plan review which shall contain in a rough and approximate manner all of the information required in the site plan application. The application must clearly state that it is a request for a preliminary site plan review. The purpose of the preliminary site plan review is to enable a developer filing the plan to obtain the advice about the applicability of the intent, standards and provisions of this chapter to the plan. After the filing of the preliminary site plan, the city shall make available to the developer its written advice regarding the compatibility of the preliminary site plan with the intent, standards and provisions of this chapter.

SECTION FOURTEEN. Section 17.90.090, Additional information for review, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.090 Additional information for review.

The city may require the applicant to submit any additional information or material which it finds is necessary for the proper review and hearing of the application.

SECTION FIFTEEN. Section 17.90.100, Duration of Approval, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.100 Duration of approval.

Approval of the site plan shall be effective for 18 months from the date of approval. Upon written application of the owner or representative, the city may extend the approval for an additional six-month period; provided, that no changes have been made in regulations, ordinances, requirements, policies or standards which impact the project.

SECTION SIXTEEN. Section 17.90.110, Waiver and exemption from site plan review, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.90.110 Waiver and exemption from site plan review.

The development services director may waive the requirement of site plan review if the objectives of this section have been met through the review of other permit requirements and the developer concurs with the development services director's decisions. All applications for PUDs processed under the procedures of Chapter 17.69 MVMC are exempted from site plan review requirements. (Ord. 3092 § 67, 2002; Ord. 2943 § 24, 1999; Ord. 2352, 1989).

SECTION SEVENTEEN. Section 17.102.025, Expansion, alteration, or reconstruction of nonconforming buildings utilized for nonconforming uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.102.025 Expansion, alteration, or reconstruction of nonconforming buildings and uses.

An existing nonconforming building and/or nonconforming use may not be enlarged, expanded, or reconstructed for the continuance of its nonconformity or nonconformities , except by special permission.

SECTION EIGHTEEN. Section 17.102.030, Authority to grant special permission, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.102.030 Authority to grant special permission.

Approval to grant a permit to enlarge, expand, or reconstruct a nonconforming building and/or a nonconforming use may be granted by the city council, upon recommendation of the hearing examiner, after a public hearing and review by the hearing examiner.

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

SECTION TWENTY. 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 TWENTY-ONE. SAVINGS CLAUSE. All previous ordinances which may be repealed in part or their entirety by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

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

PASSED AND ADOPTED this 23rd day of January, 2019.

SIGNED AND APPROVED this 11th day of February, 2019.




Doug Volesky, Finance Director



Jill Boudreau, Mayor

Approved as to form:



Kevin Rogerson, City Attorney

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