

ORDINANCE NO. 3709

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON AMENDING TITLE 15, BUILDINGS AND CONSTRUCTION, CHAPTER 15.36, FLOODPLAIN MANAGEMENT STANDARDS, TO COMPLY WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY'S 2016 COMMUNITY ASSISTANCE VISIT

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on February 8, 2017, and published on February 13, 2017. The SEPA comment period lapsed on February 23, 2017; and the SEPA appeal period lapsed on March 6, 2017 and no comments were received or appeals filed; and,

WHEREAS, a notice of public hearing was published on February 13, 2017; and,

WHEREAS, the requisite notice of adoption of the proposed amendments was transmitted to the Department of Commerce on January 29, 2017 with expedited review granted by Commerce on February 10, 2017 in compliance with RCW 36.70A.106 (1); 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, DOES ORDAIN AS FOLLOWS:

SECTION ONE. The City Council does hereby adopt the above listed recitals as 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 City has adopted and enforces Floodplain Management Standards (MVMC Chapter 15.36) to promote the public health, safety and general welfare, and to minimize public and private losses due to flooding.
 2. The Planning Commission finds that it is in the best interest of citizens of the City of Mount Vernon to comply with the amendments to MVMC 15.36, Floodplain Management Standards, requested by the WA State Department of Ecology as part of their Community Assistance Visit in 2016.
 3. 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.
- C. Planning Commission Recommendation to the City Council:
At their public hearing on February 22, 2017 after review of the materials presented by City staff and holding a public hearing the Planning Commission made a recommendation to adopt the amendments to the Mount Vernon Municipal Code that are contained in this Ordinance.

SECTION THREE. That Section 15.36.030, Definitions, is hereby repealed and reenacted, the new section to read as follows.

15.36.030 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage, and to give this chapter its most reasonable application:

1. "Appeal" means a request for a review of the building official or his designee's interpretation of any provision of this chapter, or a request for a variance.
2. "Area of shallow flooding" means a designated AO or AH zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
3. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, as established by FEMA. Designation on maps always includes the letters A or V.

4. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year, as established by FEMA; also referred to as the 100-year flood. Designation on maps always includes the letters A or V.
5. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
6. "Breakaway walls" means any type of walls, whether solid or lattice, or whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material, which are not part of the structural support of the building, and which are so designed as to break away under abnormally high tides or wave action without damage to the structural integrity of the building on which they are used, or any buildings in which they might be carried by floodwaters.
7. "Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use, or store hazardous materials or hazardous waste.
8. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, located within the area of special flood hazard.
9. "Elevation Certificate" means the official form from FEMA used to track development, provide elevation information necessary to ensure compliance with community floodplain management ordinances, and determine the proper insurance premium rate with Section B completed by Community Officials.
10. "FEMA" means Federal Emergency Management Agency.
11. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters; and/or
 - b. The unusual and rapid accumulation of runoff of surface waters from any source.
12. "Flood Insurance Rate Map (FIRM)" means the official map on which FEMA has delineated both the areas of special flood hazards and the risk-premium zones applicable to the community.
13. "Flood insurance study" means the official report provided by FEMA that includes flood profiles, and the flood boundary/floodway map, and the water surface elevation of the base flood.
14. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
15. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter found in MVMC 15.36.240B.

16. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

17. "Manufactured home park" or "subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

18. "New construction" means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter.

19. "Recreational vehicle" means a vehicle which is:

- a. Built on a single chassis;
- b. Four hundred square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

20. "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure.

21. "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

22. a. "Substantial improvement" means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- i. Before the improvement or repair is started; or
- ii. If the structure has been damaged and is being restored, before the damage occurred.

b. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

c. This term does not, however, include either:

- i. Any project for improvement of a structure to correct pre-cited existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- ii. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

23. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

24. "Water dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. (Ord. 3218 §§ 1, 2, 3, 2004; Ord. 2322 § 1, 1988; Ord. 2254 § 1, 1987; Ord. 2146 § 3, 1984).

SECTION FOUR. That Section 15.36.050, Areas of Special Flood Hazard – Basis for Establishment, is hereby repealed and reenacted, the new section to read as follows.

15.36.050 Areas of special flood hazard – Basis for establishment.

- A. The area of special flood hazard identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study for the City of Mount Vernon, Washington, Skagit County," dated January 3, 1985, and any revisions thereto, and "The Flood Insurance Study for Skagit County, Washington Unincorporated Areas, dated January 3, 1985, and any revisions thereto, with accompanying flood insurance maps, and any revisions thereto, is adopted by reference and declared to be a part of this chapter.
- B. The information in the flood insurance study shall be reviewed by the city and the city shall make reasonable efforts to utilize more recent and accurate data supplied by federal, state or other sources.
- C. The flood insurance study is on file in the office of the Building Official at City Hall, 910 Cleveland Ave, Mount Vernon, Washington, 98273. (Ord. 2146 § 5, 1984).

SECTION FIVE. That Section 15.36.110, Floodplain Development Permit - Exemptions, is hereby repealed and reenacted, the new section to read as follows.

15.36.110 Floodplain development permit – Exemptions.

The following shall not require a floodplain development permit:

A. Normal maintenance, resurfacing and rebuilding, at comparable grade of streets and access ways. (Ord. 2146 § 10(b), 1984).

SECTION SIX. That Section 15.36.200, Utilities, is hereby repealed and reenacted, the new section to read as follows.

15.36.200 Utilities.

A. All new and replacement water-supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system. In addition, water wells shall be located on high ground that is not in the floodway;

B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

C. On-site waste-disposal systems shall be located to avoid impairment to them or contamination from them during flooding. (Ord. 2146 § 14(c), 1984).

SECTION SEVEN. That Section 15.36.280, Floodway Use Restrictions, is hereby repealed and reenacted, the new section to read as follows.

15.36.280 Floodway use restrictions.

Located within areas of special flood hazard established in MVMC 15.36.050 are areas designated as floodways. Zone AI, the main stream of the Skagit River, is to be treated as a floodway. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements and other development, unless certification by a registered professional engineer or architect is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge;

B. Construction or reconstruction of residential structures is prohibited within designated floodways, except for (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either, (a) before the repair, reconstruction, or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or to structures identified as historic places shall not be included in the 50 percent figure;

C. If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood-hazard reduction provisions of Article V of this chapter, provisions for flood hazard reduction;

D. Prohibit the placement of any mobile homes except in an existing mobile home park or existing mobile home subdivision. (Ord. 3218 § 7, 2004; Ord. 2322 § 10, 1988; Ord. 2146 § 16, 1984).

SECTION EIGHT. That a new Section to be named 15.36.285, Requirements for Zones AE and A1 – 30, is hereby added to Chapter 15.36 with the new section to read as follows.

15.36.285 Requirements for Zones AE and A1 – 30.

In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the communities FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

SECTION NINE. That Section 15.36.290, Shallow flooding (AO Zone) Areas – Special Requirements, is hereby repealed and reenacted, the new section to read as follows.

15.36.290 Shallow flooding (AO Zone) areas – Special requirements

Shallow flooding zones (AO Zones) appear on flood insurance rate maps with depth designations from one to three feet, and in some areas with water velocities indicated.

A. Dike setback from 50 feet shall conform to MVMC 15.36.270.

B. New construction and substantial improvements of residential structures within all AO Zones, shall have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, immediately adjacent to the building, to or above one foot above the depth number specified on the FIRM.

C. Where velocities of five feet per second or greater are listed in an AO Zone, new construction and substantial improvements to residential structures within 200 feet of the toe of any dike shall be constructed to the following standards in addition to those listed above:

1. All buildings or structures shall be elevated so that the lowest supporting member is located no lower than one foot above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water for breakaway walls provided for in subsection (C)(6) of this section.
2. All buildings or structures shall be securely anchored on pilings or columns.
3. Pilings or columns used as structural support shall be designed and anchored so as to withstand all applied loads of the base flood flow.
4. Compliance with provisions of subsections (C)(1), (2) and (3) of this section shall be certified to by a registered professional engineer or architect.
5. There shall be no fill used for structural support.
6. Breakaway walls shall be allowed below the base flood elevation, provided they are not a part of the structural support of the building, and are designed so as to break away under abnormally high water velocities without damage to the structural integrity of the building on which they are to be used.

D. New construction and substantial improvements of nonresidential (commercial and industrial) structures within AO Zones shall either:

1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, immediately adjacent to the building, to or above one foot above the depth number specified on the FIRM; or
2. Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight, with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect; or

3. If located in an AO Zone with water velocities of five feet per second or greater and within 200 feet of the toe of a dike, be constructed to the standards of subsection A1 through A6 of this section. (Ord. 3218 §§ 8, 9, 2004; Ord. 2146 § 17, 1984).

SECTION TEN. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

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

SECTION TWELVE. 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 8th day of March, 2017.

SIGNED AND APPROVED this 27th day of March, 2017.



Doug Volesky, Finance Director



Jill Boudreau, Mayor

Approved as to form:



Kevin Rogerson, City Attorney

Published _____