



STAFF REPORT *for* PROPOSED DEVELOPMENT CODE AMENDMENTS

A. SUMMARY

Project Name: Amendments to MVMC 17.06, 5.04, and 17.56; CA13-001

Project Manager: Rebecca Lowell, Senior Planner

Project Description: Proposed are amendments to Mount Vernon Municipal Code (MVMC) Chapter 17.06 (Zoning Code Definitions) to remove the existing reference to ‘male and female impersonators’ from the definition of ‘adult cabaret’; to MVMC 5.04 (Business Licenses) to add a definition for ‘cabaret’; and to MVMC 17.56 (Commercial-Limited Industrial Zoning Designation) to add a section to allow expansions of residential uses that were existing within this zone when it was annexed into the City in 2005.

Please see the attached codes, labeled as **Exhibit A**, that were formatted in a tracking program, so that the proposed changes to the code are easily identifiable.

B. EXHIBITS

Exhibit A: Proposed Code Amendments Formatted in Tracking Program

Exhibit B: Procedural Items: Notice of Public Hearing, SEPA Determination, and Commerce materials

Exhibit C: Resolution of Mutual Understanding

C. BACKGROUND

Staff is continuously looking for ways to improve our municipal code. As staff applies our current code to projects, discrepancies are found and better ways to apply the code are discussed and eventually brought forward to the Planning Commission and City Council.

With regard to cabarets, the mention of ‘male and female impersonators’ in the

definition of 'adult cabaret' was brought to the attention of staff several weeks ago in response to the possible opening of a dinner and theater business in Mount Vernon that may have male or female impersonators performing shows.

The City's current code classifies this activity as 'adult cabaret' instead of 'cabaret' due to the impersonator(s). The intent of the 'adult entertainment' regulations that the City has in place is to regulate activities that are sexually explicit in nature. Male and female impersonators do not, and should not, automatically fall into the category of adult entertainment simply because they are impersonating the opposite sex.

The City's zoning code regulates 'adult' establishments differently than other uses allowed in the code; and as such, if a business is not presenting 'adult' matter (i.e., sexual acts and activities) we need to make sure there is a clear distinction between the types of entertainment that may be presented to patrons.

With regard to the expansion of residential uses within the Commercial-Limited Industrial (C-L) zone, staff was contacted by a property owner in South Mount Vernon who wished to expand their existing single-family home that happens to be in the C-L zone. While researching how to allow this expansion, staff came across the 'Resolution of Mutual Understanding' that was signed by the City and the group that was organized to negotiate with the City the annexation of South Mount Vernon. This code amendment will allow existing residential uses to expand in South Mount Vernon ensuring that the agreed upon terms are met. The referenced Resolution is attached hereto labeled as **Exhibit C**.

D. ENVIRONMENTAL REVIEW

- A SEPA threshold Determination of Non-Significance on a non-project action was issued on January 8, 2013; and published on January 11, 2013.
- Public Hearing Notices were published for both the Planning Commission and City Council hearings on January 11, 2013.
- The State Office of Commerce was notified of the proposed amendments on January 8, 2013, an acknowledgement letter was received from Commerce dated January 14, 2013, and Commerce granted the City expedited review on January 28, 2013 (their identification number: 18829).

E. RECOMMENDATION

Staff recommends that the Planning Commission make a recommendation to the City Council to approve the code amendments attached as **Exhibit A**, Mount Vernon Municipal Code (MVMC) Chapters 17.06 (Definitions); 5.04 (Business Licenses), and 17.56 (Commercial-Limited Industrial Zone).

Proposed motion for the Mount Vernon Planning Commission:

The Planning Commission has reviewed the proposed “Findings of Fact and Conclusions of Law” and the recommendations of staff and hereby recommends to the City Council that the amendments to the Mount Vernon Municipal Code, attached as **Exhibit A** be adopted and codified.

**PLANNING COMMISSION & CITY COUNCIL
PROPOSED AMENDMENTS TO
THE MOUNT VERNON MUNICIPAL CODE**

**FINDINGS OF FACT, CONCLUSIONS OF LAW and
RECOMMENDATION**

On February 5, 2013 the City of Mount Vernon Planning Commission held a public hearing to consider amendments to the Municipal Code; and on February 13, 2013 the City Council held a public hearing to consider the same amendments to the Municipal Code.

All persons present at the hearings wishing to speak were heard and all written comments were considered, along with the written staff report submitted by Rebecca Lowell. Based on the testimony and other evidence, the Planning Commission and City Council hereby adopt the following:

A. FINDINGS OF FACT

1. The hearings of February 5, 2013 and February 13, 2013 were both preceded with appropriate notice, published on January 11, 2013.
2. Notice of adoption of the proposed amendments has been duly transmitted in compliance with RCW 36.70A.106 (1).
3. A SEPA Threshold Determination of Non-significance, non-project action, was issued on January 8, 2013, and published on January 11, 2013. The SEPA appeal period will conclude on February 4, 2013.

Based on the foregoing Findings of Fact, the Planning Commission and City Council hereby makes the following:

B. CONCLUSIONS OF LAW

1. The proposed amendments ensure that the City's development regulations are internally consistent.
2. The proposed amendment to MVMC 17.56 ensures that the terms of the Resolution of Mutual Understanding that the City signed in 2003 is complied with.
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.

4. The proposed amendment is found to be in compliance with the State Growth Management Act.
5. 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).

Based on the foregoing Findings of Fact and Conclusions of Law, the Planning Commission makes the following:

RECOMMENDATION TO CITY COUNCIL

It is hereby recommended by the Mount Vernon Planning Commission that the amendments to the Mount Vernon Municipal Code, attached hereto as **Appendix A**, be adopted by the Mount Vernon City Council for inclusion in the City of Mount Vernon Municipal Code.