

ORDINANCE NO. 3442

AN ORDINANCE ADOPTING IMMEDIATE INTERIM OFFICIAL CONTROLS, REGULATIONS AND POLICY REGARDING THE EXTENSION OF MUNICIPAL UTILITIES TO UNINCORPORATED URBAN GROWTH AREAS PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY AND ESTABLISHING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Mount Vernon Comprehensive Plan has consistently been maintained in compliance with the Washington State Growth Management Act, as amended, since its initial adoption in 1995; and

WHEREAS, The Washington State Growth Management Act (GMA) requires the City of Mount Vernon to take legislative action to review and, if needed, revise its Comprehensive Plan and development regulations on a regular basis and that following extensive public process the City Council adopted an updated and revised Comprehensive Plan and associated development regulations in January of 2006; and

WHEREAS, a planning goal of the GMA [RCW 36.70A.020(12)], is for local jurisdictions to adopt planning policies in their Comprehensive Plan and development regulations to ensure the orderly and planned development of public facilities and services at the time when such development would be needed without decreasing current service levels; and

WHEREAS, the GMA [RCW 36.70A.110(1)] recognizes the need for orderly and planned urban growth, requiring that urban growth areas designated outside City limits be limited to areas already characterized by urban growth or adjacent to territory already characterized by urban growth; and

WHEREAS, although the GMA contemplates that a city is the appropriate provider of utility services within its urban growth areas, a city is not obligated by the GMA to so provide such services at any particular time; and

WHEREAS, RCW 35.67.310, and RCW 35A.080.010 provides that a city "may" permit or provide connections with any of its sewers or utility service from property beyond its limits and that the Washington State Supreme Court held in Yakima County Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 381-82 (1993) that the use of "may" grants a power that is purely discretionary and that a City is not bound to provide municipal utility services to persons residing outside its boundaries; and

WHEREAS, The City Council finds that it is within the best interests of the City, promoting the public safety, health and general welfare of the public, to control how and when urban growth occurs within its unincorporated Urban Growth Areas and that providing or not providing urban services is a basic tool of this control; and

WHEREAS, The City Council finds that it is contrary to sound planning and orderly and timely development to hold itself out as a willing supplier of municipal utility services to all who request such services in an unincorporated urban growth area or as the exclusive supplier of municipal utility services in an unincorporated urban growth area without comprehensive examination of its planning policies, capacity needs, and the impacts including economic impacts the extension of such services will have;

WHEREAS, The City Council desires to retain its discretion as provided by law to deny the extension of such services or provide for the extension of such services subject to reasonable conditions as the law may allow; and

WHEREAS, Mount Vernon has expended considerable resources in planning for the orderly, timely and contiguous development and annexation of property situated in the City's unincorporated urban growth area and that development that is contrary to orderly, timely and contiguous development shall materially alter and cause harm to the City; and

WHEREAS, The City Council finds it is necessary to retain its discretion to provide a development framework for unincorporated urban growth areas or fringe areas that guides sound, sustainable patterns of land use, limits sprawl, protects rural character, evidences sound stewardship of the environment, and provides for efficient provision of public services and facilities as the City expands and that development will increase density and mix land uses at a pedestrian scale; and

WHEREAS, The City finds it necessary to adopt interim official controls, interim regulation and policy for the promotion of contiguous and orderly development and provision of urban services to such development in order to control timing and phasing of utility extensions while it conducts further review of its comprehensive plan including its adopted capital facilities element/capital improvements plan and potential inclusion of phasing policies that specify when and where urban services will be available within the unincorporated urban growth area so that it will be in a better position to apply reasonable conditions on future development; and

WHEREAS, the GMA [RCW 36.70A.390] provides that the City Council may adopt a moratorium, interim zoning ordinance and interim official control; and

WHEREAS, a moratorium, interim zoning ordinance and interim official control enacted under RCW 36.70A.390 and RCW 35.63.200 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development; and

WHEREAS, RCW 36.70A.390 and RCW 35.63.200 authorizes the City to adopt interim official controls or ordinances regarding requests for an agreement or other determination from the City for the provision or the extension of municipal utilities in unincorporated urban growth areas, and to hold a public hearing on the interim official controls or ordinances within 60 days of the commencement of this Ordinance, and

WHEREAS, the City Council finds that an emergency exists within the City, and that an interim regulation, official control and policy on requests to extend sewer or other municipal utility services in unincorporated urban growth areas as now or hereafter amended is necessary for the immediate preservation of the public peace, health, safety and welfare and for the support of City government and its existing institutions.

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

Section 1. Recitals. The foregoing recitals are incorporated herein as if fully set forth herein.

Section 2. Repealer. That in order to preserve the general health, safety and welfare of all the public, Mount Vernon Municipal Code Title Thirteen (13), Chapter Eight (8), Section zero six zero (060), [MVMC 13.08.060] adopted by the City Council and codified through Ordinance 3156 and Ordinance 3135 is hereby repealed in its entirety.

Section 3. Supercedure. In the event of a conflict between this ordinance and any other ordinance, resolution or development regulation adopted by the City codified or not codified that sets forth policy or criteria for requests to extend any municipal utility outside City limits this ordinance shall control. All ordinances or part of ordinances inconsistent with the provisions of this ordinance are hereby repealed

Section 4. **That in order to preserve the general health safety and welfare of the public, any request for an extension of utility service, including sewer or storm water service, into unincorporated Mount Vernon Urban Growth Areas prior to annexation shall comply with the following City interim policy and regulation:**

A. City's authority to provide services outside city limits.

The City is authorized, pursuant to RCW 35A.80.010 and RCW 35.67.310 to provide utility services including storm water and sewer service to property outside the City limits. The City's provision of such service is not mandatory. In all circumstances in which the City agrees to provide utility service to property beyond its limits, the applicants for such service must comply with all of the terms and conditions of this Ordinance.

B. Council approval required--City under no obligation.

Each proposed extension of utility services will require Council approval. Any connection or decision to allow or deny the extension of the City public sewer utility, storm water utility or other utility owned by the City to those properties situated within the unincorporated areas of the City's urban growth areas, as adopted or amended, shall be at the discretion of the City Council exercising its legislative, policy setting, authority. Nothing in this chapter shall be construed as committing the City to providing extraterritorial utility service, the intent of this chapter merely being to state the terms and

conditions under which such service would be provided if and when a decision is made to provide such service. Any request for such an extension by an Applicant should be approved or denied by resolution of the City Council.

C. Utility service application.

Any person owning property outside the City limits and desiring to have the City's utility services extended to their property shall make application in writing to the City's Community and Economic Development Department. Every application shall be made by the owner of the property to be connected and supplied the service or by his/her authorized agent. That Applicant shall provide the following information:

1. A legal description of the property to be served by the request.
2. A description of the estimated capacity needed for such sewer service for a proposed development.
3. The name of the property owner.
4. The applicable County zoning development regulations that would control any development or proposed development of the property prior to annexation.
5. State fully the purposes for which the service is required.

D. Council approval of application – Council discretion

The City Council may authorize, at its discretion, a request by an Applicant to extend utilities into specific areas in the City's unincorporated urban growth area. The Council should examine all policy related criteria rationally related to promoting contiguous, orderly and timely development in unincorporated urban growth areas, the affects the provision of urban services will have including economic impacts and sustainable land use patterns, and whether it is overall within the City's best interests. Such criteria may include but is not limited to:

1. Economically feasibility
2. Consistency with the City's Comprehensive Plan
3. The capacity of the utility to provide such service and impacts to its capacity.
4. The promotion of contiguous, orderly and timely development and the provision of urban services related to such development
5. The proximity of available services and the difficulty of whether they can easily and economically be extended.
6. The affect on the City's ability to provide services elsewhere

E. Utility extension agreement

Every Applicant for utility service outside the City limits that receives Council approval must sign an agreement with the City which conditions the provision of the service including but not limited to the following terms:

1. Agreement to Run with the Property. The agreement shall be recorded against the property in the Skagit County Auditor's office, and shall constitute a covenant running with the land. All covenants and provisions of the agreement shall be binding on the owner and all other persons subsequently acquiring any right, title or interest in or to said property.

2. Warranty of Title. The agreement shall be executed by the owner of the property, who shall also warrant that he/she is authorized to enter into such agreement.

3. Costs of System Extension. The owner shall agree to pay all costs of design, engineering and construction of the service extension, which shall be accomplished to city standards and conform to plans approved by the City Public Works Director. Costs of plan review and construction inspection shall also be paid by the owner.

4. Easements and Permits. The owner shall secure and obtain at the owner's sole cost and expense, all permits, easements, and licenses necessary to construct the extension.

5. Dedication of Capital Facilities. The owner shall agree to dedicate all capital facilities constructed as part of the water and/or sewer extension (such as water or sewer main lines, pump stations, etc.) at no cost to the City upon completion of construction, approval and acceptance by the City.

6. Connection Charges. The owner shall agree to pay the connection charges, assessment fees and service fees at the applicable rates as set forth in the Mount Vernon Municipal Code as these sections now exist or may hereafter be amended. Connection charges shall be calculated at the rate applicable at the time of actual connection.

7. Waiver of Right to Protest LID. If requested by the City, the owner shall agree to sign a petition for the formation of an LID or ULID for specified improvements in which the owner would be benefited at the time one is circulated and to waive his/her right to protest formation of any such LID or ULID.

8. Agreement to Future Annexation. The owner of all property requesting utility services inside the City's adopted urban growth area shall agree to sign any petition leading to future annexation of said property to the City of Mount Vernon.

9. If adequate sewer or utility facilities are not in place to service the proposed property, then the developer/property owner will be required to construct such facilities.

10. If adequate sewer facilities are in place to serve the proposed property or development, then the developer/property owner will be required to connect the proposed development to the City's sewer facilities, pay appropriate charges and any remaining facility or improvement necessary to achieve connection shall be constructed by the owner.

11. Development of Property to Conform to Applicable Development Regulations. Developer/property owner shall be required to comply with all applicable development regulations set forth under the applicable code including all applicable County zoning regulations; the agreement shall not impose zoning regulations beyond city borders unless otherwise permitted by law.

12. Termination for Noncompliance. In addition to all other remedies available to the City for the owner's noncompliance with the terms of the agreement including termination of the agreement and all owner's contractual rights, the City shall have the ability to disconnect the utility, and for that purpose may at any time enter the property.

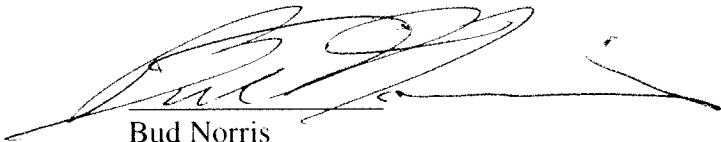
Section 4. Applicability. This ordinance shall apply to all requests for extension of municipal utility services in unincorporated urban growth areas regardless of when such requests have been made unless there exist an agreement the City has previously entered into; in that event, the City shall allow service connection to facilities constructed under such agreements.

Section 5. Declaration of Emergency and Immediate Effective Date. The whereas clauses of this ordinance are adopted by the City Council as findings in support of this ordinance as well as a designation of this ordinance as a public emergency ordinance necessary for the protection of the public health, public safety, public property and public peace. This ordinance shall take effect immediately upon adoption by the Council. A public hearing shall be held within 60 days following the adoption of this Ordinance and if continued, this ordinance shall be effective for six months following the effective date unless further renewed for one or more six-month periods following a subsequent public hearing and findings of fact made prior to each renewal.

Section 6. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

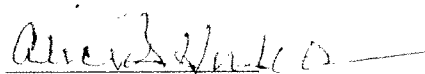
ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON

Wednesday, February 25th, 2009



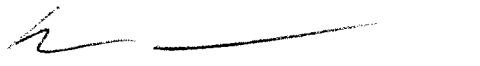
Bud Norris
Mayor

Attested by:



Alicia Huschka
Finance Director

Approved as to form:



Kevin Rogerson

City Attorney

Published: April 23, 2009