

**CITY OF MOUNT VERNON, WASHINGTON  
ORDINANCE NO. 3445**

**AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON RELATING TO LAND USE PLANNING; ADOPTING FINDINGS OF FACT AND CONCLUSIONS; RATIFYING, CONFIRMING AND CONTINUING ORDINANCE 3442 ADOPTED ON FEBRUARY 25, 2009; PROCLAIMING AN EMERGENCY; AND, ADOPTING INTERIM REGULATIONS AND CONTROLS FOR APPLICATIONS OR REQUESTS TO THE CITY TO EXTEND MUNICIPAL UTILITIES TO UNINCORPORATED URBAN GROWTH AREAS.**

**WHEREAS**, RCW 35A.63.220 authorizes cities to enact interim regulations or official controls to preserve the status quo while new plans or regulations are considered and prepared and to hold a public hearing on such interim regulations within 60 days of their commencement; and

**WHEREAS**, Washington's Growth Management Act at 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 35A.63.220 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**, On February 25<sup>th</sup>, 2009 at a regularly scheduled City Council meeting, the City Council declared an emergency and adopted an immediate interim zoning ordinance and interim official control by unanimous passage of Ordinance 3442 upon the filing of applications or requests to the City to extend municipal utilities to unincorporated urban growth areas; and

**WHEREAS**, Pursuant to RCW 36.70A.390 and/or RCW 35A.63.220, the City Council must hold a public hearing on this moratorium within sixty (60) days of its adoption. The Council has scheduled a public hearing for April 15<sup>th</sup>, 2009; and

**WHEREAS**, after the public hearing, the City Council must adopt findings of fact on the subject of this interim ordinance and official control, and either justify its continued imposition or cancel the interim control.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON DOES HEREBY ORDAIN, AS FOLLOW:**

**Section One.** The City Council hereby adopts and makes the following findings:

1. On April 15<sup>th</sup>, 2009, the City Council met at a regularly scheduled meeting and discussed the nature of applications relating to the City's expansion or extension of municipal utilities, including expansion of storm water and sewer into Urban Growth Areas and its effects and impacts upon the public health safety and welfare, the City's ability to provide effective levels of service over the twenty year planning horizon, capacity needs, infill development requirements, and the need for measured, planned, phased and incremental development of its municipal utilities.
2. On April 15<sup>th</sup>, 2009, the City Council allowed and received public testimony regarding the continuation of Ordinance 3442.
3. On February 25, 2009, the City Council adopted Ordinance 3442 declaring an emergency and enacting an interim regulation and official control governing requests to extend municipal utilities into unincorporated urban growth areas.
4. The City's NPDES for discharges from its Wastewater Treatment Plant (WWTP) expires in November 2010, and the Washington Department of Ecology by correspondence of March 17, 2009, expresses the belief that the City should begin immediately to begin evaluation of the WWTP and to seek renewal of the NPDES.
5. In order to serve the wastewater treatment needs of the City of Mount Vernon the City has previously invested considerable resources in improvements to its WWTP and other facilities.
6. Failure to adequately plan and serve needs of the City through measured and planned growth may result in noncompliance with state and federal discharge permits resulting in fines and other enforcement measures including requiring the City to expend further funds to provide for emergency capital improvements to its WWTP and related facilities.
7. Conditions resulting in excess demand on the City's wastewater treatment capacity may result in unregulated discharges of insufficiently-treated wastewater into the environment including the aquifer, surface waters or waters of statewide significance which endangers the public safety, health and welfare.
8. It is within the best interests of the City, promoting the safety, health and general welfare of the public, to control how and when urban growth occurs within unincorporated Urban Growth Areas and that management of extension of urban services is a basic tool of this control.
9. It is contrary to sound planning and orderly and timely development for the City to hold itself out either 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 and environmental impacts of such utility extensions.

10. The Countywide Planning Policies, at Policy 12.6, states that “Development shall be allowed only when and where all public facilities are adequate, and only when and where such development can be adequately served by regional public services without reducing services elsewhere; and, at Policy 12.7, that “Public Facilities and services needed to support development shall be available concurrent with the impacts of development.”

11. The City Comprehensive Plan states that for extension of utility services to Urban Growth Areas “The City shall determine that the area can be served with extension of City sewer within six (6) years from the date of the development proposal,” and the City has not determined through available plans, including financing considerations, that sewer services are available for extension within six years.

12. Mount Vernon has expended considerable resources in planning for the orderly, timely and contiguous development and annexation of property situated in 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 by impacting the level of essential government services such as police and fire services, as well as municipal utility services such as sewer and storm water service

13. The City wishes to preserve its discretion in its provision of municipal utility services in unincorporated urban growth areas up to an including preserving the status quo so that it may sufficiently and comprehensively examine its planning policies, capacity needs, and the impacts including economic and environmental impacts of such extensions of utilities and other City services..

14. The April 15<sup>th</sup>, 2009, public hearing held on Ordinance 3442 satisfied the participation requirements under RCW 36.70A.390 and/or RCW 35.63.220.

15. The Department of Community and Economic Development has developed a work plan for related studies, attached as Exhibit “A” hereto and included herein by this reference. That work plan recommends continuation of Ordinance 3442.

16. The City incorporates and reaffirms by reference all findings it has previously made in Ordinance 3442.

**Section Two.** The City Council hereby adopts and makes the following conclusions:

1. 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.

2. A proliferation of acceptance of requests to extend sewer without a comprehensive examination of the cumulative impacts to City utilities and other public services will likely result in the creation of capacity issues, lack of coordinated development, unplanned utility rate increases, and hazards for unregulated discharges and violations of the City's discharge permits which jeopardize the safety, health and general welfare of the public.

3. In response to increasing concern about the proliferation of residential housing, it is necessary and in the best interests for the City to retain discretion in acceptance or rejection of requests to extend municipal utilities to areas outside the City but in urban growth areas so that the City may make a comprehensive investigation of its policies, standards and criteria for the acceptance of a request to extend municipal utilities.

4. Pursuant to WAC 197-11-880, the adoption of Ordinance 3426 is exempt from the requirements for a threshold determination under the State Environmental Policy Act.

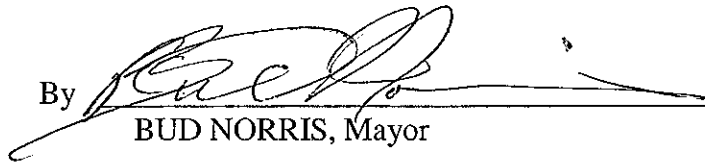
5. The City adopts the work plan attached as Exhibit "A" and incorporated herein by this reference.

**Section Three.** The City Council hereby finds that the moratorium adopted under Ordinance 3442 shall be effective for up to one year with the adoption of the attached work plan or at the time that the City's comprehensive review and consideration of amendment/adoption of regulations have been completed, whichever is sooner. The City Council shall make its decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

**Section Four.** This ordinance shall take effect immediately upon passage by the City Council.


**Section Five.** 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.

Adopted at a regular meeting of the City Council of the City of Mount Vernon, Washington, held on the April 15<sup>th</sup>, 2009.

By   
BUD NORRIS, Mayor

Attest:   
ALICIA D. HUSCHKA, Finance Director

Approved as to form:

  
KEVIN ROGERSON, City Attorney

Published: April 28, 2009

## **EXHIBIT A**

### **WORK PLAN OVERVIEW FOR THE ADOPTION OF REGULATIONS AND CONTROLS FOR APPLICATIONS OR REQUESTS TO THE CITY TO EXTEND MUNICIPAL UTILITIES TO UNINCORPORATED URBAN GROWTH AREAS**

1. Staff will complete an update of the Buildable Lands/Land Capacity Analysis. This analysis will quantify the development potential both within the existing City limits and within the existing Urban Growth Areas. *Target Completion Date: January 2009 – October 2009*
2. Staff will complete an analysis of the capacity of the City's Waste Water Treatment Plant (WWTP) and will compare this capacity to the development potential identified with the Buildable Lands/Land Capacity Analysis. *Target Completion Date: April - October 2009*
3. Based on the outcome of the Buildable Lands/Land Capacity Analysis and the WWTP Capacity Analysis staff will develop recommendations to either reduce the size of the existing Urban Growth Area and/or a phasing plan for providing sanitary sewer service that will likely exceed a standard 20 year planning horizon. The recommendations developed by staff will likely be in the form of changes to the text and maps within the Comprehensive Plan and changes to the City's development regulations. *Target Completion Date: October 2009*
4. Review draft Comprehensive Plan and development regulation amendments with the City Council. *Target Completion Date: November 2009*
5. Review the draft Comprehensive Plan and development regulation amendments with the Planning Commission. *Target Completion Date: December 2009*

6. Prepare SEPA Checklist for a “non-project” action; submit draft ordinances and materials to CTED for 60 day review. *Target Completion Date: January - February 2010*
  
7. Public Hearing before the Planning Commission. *Target Completion Date: March 2010*
  
8. Public Hearing and City Council final action. *Target Completion Date. April 2010*