

**ORDINANCE NO. 3513**

**AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON,  
AMENDING MOUNT VERNON MUNICIPAL CODE TITLE 17,  
CHAPTER 17.102 NONCONFORMING BUILDINGS OR USES**

**WHEREAS**, the requisite public hearing before the Planning Commission on December 7, 2010 was preceded with appropriate notice, published on November 18, 2010; and the requisite City Council hearing of January 5, 2011, was preceded with appropriate notice also published on December 17, 2010; and,

**WHEREAS**, the requisite notice of adoption of the proposed amendments has been duly transmitted in compliance with RCW 36.70A.106 (1); 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**, On November 15, 2010, notice of the potential adoption of the proposed amendment to the Comprehensive Plan and Municipal Code was duly transmitted to the Washington State Department of Commerce with a request for expedited review, in compliance with RCW 36.70A.106 (1); and

**WHEREAS**, in compliance with all the terms, conditions, and procedures of the State Environmental Policy Act (SEPA) and Chapter 15.06 Mount Vernon Municipal Code, an environmental assessment of the proposed amendment to the Municipal Code was conducted and, upon determination that no provable significant, potentially adverse environmental impacts would result from the amendment, a determination of non-significance was issued on November 15, 2010 and published on November 18, 2010, with no appeals having been filed prior to the close of the appeal period on December 3, 2010; and

**WHEREAS**, at the public hearing on December 7, 2010 the Planning Commission recommended that the City Council move to adopt the proposed amendments to Chapter 17.102 Mount Vernon Municipal Code; and,

**WHEREAS**, the proposed amendments to Chapter 17.102 MVMC, ensure that the City's development regulations with regard nonconforming structures and/or uses are consistent; and,

**WHEREAS**, the proposed amendments are found to be in compliance with the Washington State Growth Management Act.

**NOW, THEREFORE,**

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

**SECTION 1.** The City Council adopts the Planning Commission’s findings of fact and conclusions of law in their entirety.

**SECTION 2.** The City Council finds:

A. That 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.

B. That 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).

**SECTION 3.** That Chapter 17.102 of the Mount Vernon Municipal Code is hereby repealed and reenacted, to read as follows:

**Chapter 17.102  
NONCONFORMING BUILDINGS OR USES**

Sections:

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|------------|---|
| 17.102.010 | Existing uses— Continuance permitted when.  |
| 17.102.020 | Expansion, alteration or reconstruction of nonconforming buildings utilized for conforming uses.  |
| 17.102.025 | Expansion, alteration, or construction of nonconforming buildings utilized for nonconforming uses |
| 17.102.030 | Authority to grant special permission.  |
| 17.102.040 | Application.  |
| 17.102.050 | Fee.  |
| 17.102.060 | Public hearing notification.  |
| 17.102.070 | Approval or denial of application — Standards.  |
| 17.102.080 | Approval of application — Procedure.  |
| 17.102.090 | <i>Repealed.</i>  |
| 17.102.100 | Appeal of City Council decision.  |
| 17.102.110 | <i>Repealed.</i>  |
| 17.102.120 | Reconstruction or use permits authorized when.  |
| 17.102.130 | Existing uses — Certification issued when.  |

**17.102.010 Existing uses— Continuance permitted when.**

The lawful use of a structure or building existing as of the effective date of these provisions may continue although such use does not conform to the regulations contained herein; provided, that if such nonconforming use is abandoned, any future use of a structure or building shall conform to the regulations of the district in which it is located. Except in cases of *force majeure* events beyond the control of owner, discontinuance of a nonconforming use of land, structure or building for a continuous period of twelve months shall be *prima facie* evidence of intention to abandon. (Ord. 2352, 1989).

**17.102.020 Expansion, alteration or reconstruction of nonconforming buildings utilized for conforming uses.**

A. Ordinary maintenance and repair of a nonconforming building or structure and its equipment or fixtures are permitted; provided, that the value of the repair does not exceed 50 percent of the fair market value as established by an insurance company, appraisal or other equal and fair method. If a nonconforming building is damaged or destroyed by fire, earthquake, explosion, act of God, or the public enemy, or other similar event beyond the control of the property owner, it may be reconstructed to the extent of 100 percent of the replacement cost of the structure. Such damaged or destroyed building or structure may be reconstructed and utilized for any conforming use based on dimensions that do not exceed those contained in the footprint at the time of the damage or destruction, and within the height of the structure at the time of the damage or destruction, and except for any applicable setback provisions, must conform to the building code and applicable underlying zoning district development standards for reconstruction of nonconforming structures, *provided* that (i) application is made for the permits necessary to restore the building within six months of the date the damage occurred, (ii) all permits are obtained, and (iii) the restoration is completed within two years of permit issuance

B. Except as set out below, an existing nonconforming building or structure utilized for a conforming use may be enlarged or expanded only if it conforms to the regulations of this document and of the building code such that, when completed, it will no longer be a nonconforming building or structure. Structures or buildings located within the “Urban Mixed-use” Environmental Designation under the City’s Shoreline Master Program (or any successor thereto) that were (i) legally established, and (ii) are utilized for a conforming use, but (iii) are nonconforming with regard to setback requirements may be enlarged or expanded and utilized for any conforming use under the applicable zoning classification *provided* that any such enlargement or expansion (iv) does not result in a further extension of the building footprint into restricted setbacks under the applicable zoning classification, (v) does not extend the footprint of the structure any closer to the shoreline than the current design; (vi) will not interfere with, or obstruct dedicated public access routes to the shoreline, per applicable requirements set out herein; (vii) will meet any construction standards enacted by the City to protect adjacent flood risk reduction structures, and (viii) will otherwise adhere to underlying development and building regulations.

**17.102.025 Expansion, alteration, or reconstruction of nonconforming buildings utilized for nonconforming uses**

An existing nonconforming building that is used for a nonconforming use may not be enlarged, expanded, or reconstructed for the continuance of its nonconforming use, except by special permission. (Ord. 2352, 1989).

**17.102.030 Authority to grant special permission.**

Approval to grant a permit to enlarge, expand, or reconstruct a nonconforming building that is utilized for 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. (Ord. 3429 § 166, 2008).

**17.102.040 Application.**

Application to enlarge, expand, or reconstruct a nonconforming building or structure that is used for either a conforming or a nonconforming use shall be submitted to the Community and Economic Development Department and shall contain all of the items requested in Chapter 14.05 MVMC. No application shall be accepted unless it complies with such requirements. (Ord. 3429 § 167, 2008).

**17.102.050 Fee.**

Each application shall be accompanied by a nonrefundable fee as set forth in Chapter 14.15 MVMC upon the filing of the application with the Community and Economic Development Department. No action shall be taken upon the application until the fee has been paid. (Ord. 3429 § 168, 2008).

**17.102.060 Public hearing notification.**

A. The Hearing Examiner shall hold at least one public hearing on any proposal to enlarge or expand a nonconforming building or structure that is used for a nonconforming use.

B. Notice of public hearing shall be published at least 14 calendar days before the hearing in the newspaper of record. (Ord. 3429 § 169, 2008).

**17.102.070 Approval or denial of application– Standards.**

The City Council may approve a permit to enlarge, expand, or reconstruct a nonconforming building or structure that is utilized for a nonconforming use only after considering the following:

- A. The effect of such enlargement, expansion or reconstruction on the appearance and use of the area that might be affected;
- B. The effect of the granting of such permit on traffic patterns in the area;
- C. The adequacy of parking facilities provided or to be provided;
- D. The effect on adjacent and nearby property or the economic effect of the proposed expansion, alteration or reconstruction on both the applicant and the owners of property in the vicinity. (Ord. 2352, 1989).

**17.102.080 Approval of application — Procedure.**

If, after considering the foregoing factors, the Hearing Examiner finds that the proposed alteration, expansion, or reconstruction will not have a material adverse effect upon the use and enjoyment of the properties within the area, which conform to the existing zoning, then and in that event, the Hearing Examiner shall recommend issuance of a permit for such alteration, expansion, or reconstruction and forward such to the City Council for approval or disapproval by majority vote. If approved by the City Council, the permit may then be issued. (Ord. 3429 § 170, 2008).

**17.102.090 Denial of application — Appeal.**

*Repealed by Ord. 3429.* (Ord. 3092 § 78, 2002; Ord. 2967 § 1, 1999; Ord. 2855 § 7, 1997; Ord. 2352, 1989).

**17.102.100 Appeal of City Council decision.**

An applicant whose request to enlarge, expand, or reconstruct a nonconforming building or use has been disapproved by the City Council may appeal to a court of competent jurisdiction. (Ord. 2352, 1989).

**17.102.110 Destroyed buildings — Reconstruction restriction.**

*Repealed by Ord. 3513.* (Ord. 2352, 1989).

**17.102.120 Reconstruction or use permits authorized when.**

The Hearing Examiner may recommend to the City Council that a permit, which may impose a time of expiration, be issued for the reconstruction of a nonconforming building. A like permit may be so recommended and issued for the nonconforming use of any area or existing building for a specific period of time not exceeding one year provided that the Hearing Examiner finds that the public convenience and advantage will be served by such nonconforming use and that the building or use will not be materially detrimental to the public welfare. Upon the receipt of such recommendation, the City Council by majority vote may authorize the Community and Economic Development Department Director to issue such permit. (Ord. 3429 § 172, 2008).

**17.102.130 Existing uses – Certification issued when.**

Upon a written request of the owner, the Community and Economic Development Department Director, after inspection, shall issue to the owner a certificate of use or occupancy for any building or land existing as of the effective date of the ordinance codified in this title, certifying the use of the building or land and whether such use conforms to the provisions of this title. Where a plat is not already on file, the application for a certificate of use shall be accompanied by a survey in duplicate form such as is required for a permit. (Ord. 3092 § 80, 2002; Ord. 2967 § 1, 1999; Ord. 2352, 1989).

**SECTION 4.** City staff are hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

**SECTION 5.** In the event any term or condition of this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect

other terms, conditions, or applications of this ordinance which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this ordinance are declared severable.

**SECTION 6.** 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 5<sup>th</sup> day of January 2011.

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BUD NORRIS, Mayor

SIGNED AND APPROVED this 5<sup>th</sup> day of January 2011.

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ALICIA D. HUSCHKA, Finance Director

Approved as to form:

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Kevin Rogerson, City Attorney

Published \_\_\_\_\_