ORDINANCE NO. 3715

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, REPEALING IN ITS ENTIRETY AND REENACTING CHAPTER 5.04 BUSINESS LICENSES OF THE MOUNT VERNON MUNICIPAL CODE

Whereas, many sections of Chapter 5.04 of the City of Mount Vernon Business Licenses Ordinance have not been updated or revised in a number of years; and

Whereas, the City Council finds that business well receive increased level of services including web accessibility, and turn-around times to obtain business licensed by contracting with the Washington State Department of Revenue to providing licensing services; and

Whereas, in order to obtain such services, the City requires amendment of its regulations regarding business licenses to conform to the licensing services provided by the Washington State Department of Revenue; and

Whereas, the City Council has recently added a new category of business licenses for adult entertainment and adult businesses; and

Whereas, in order to properly regulate adult entertainment and adult business licenses, the City needs to amend its regulations regarding business licenses for the protection of the public health, safety, general welfare, economic vitality and economic growth, and morals.

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

SECTION 1. The City Council adopts the recitals set forth above as findings of fact justifying adoption of this Ordinance. In addition the Council reaffirms its adoption of all the findings in Ordinances 3698, 3705 and 3714; Ordinances involving Adult Entertainment and Adult Businesses, their impacts and need for regulatory controls related thereto and incorporates those findings (including their recitals) and the legislative records therein as if set forth fully herein justifying adoption of this Ordinance.

SECTION 2. That Chapter 5.04 of the Mount Vernon Municipal Code is hereby repealed in its entirety and reenacted, which reenacted section shall be titled and now read as follows:

Chapter 5.04
BUSINESS LICENSES

Sections:
5.04.010 Chapter and purpose
5.04.015 City power to license.
5.04.020 Definitions.
5.04.030 Business License required – Fee and Posting.
5.04.040 Program application, renewal, delinquency and cancellation
5.04.042 License- Application Procedures for Adult Businesses
5.04.045 Adult Business License Application- Form and Content
5.04.047 Investigation Required- Adult Business License
5.04.050 License – Nontransferable.
5.04.060 License – Fee provisions.
5.04.070 Exempt from City Licensing Program and Fee.
5.04.080 Non-profit business and organizations
5.04.090 License term or expiration
5.04.100 License denial or revocation
5.04.110 Finance Director as licensing authority.
5.04.120 Requests for finance director review.
5.04.130 Violations – Penalties.
5.04.140 Licenses issued under prior law.

5.04.010 Chapter and purpose.

The licenses provided herein shall be for the purpose of regulation. The provisions of this title shall be deemed an exercise of the police power of the state and of the city for the protection of the public, economic and social welfare, peace and morals including but not limited to ensure that businesses are authorized and permitted in the proper zoning districts and shall be liberally construed for the accomplishment of the purposes stated herein. The City finds that for public safety and emergency purposes, current contact and operating information about each entity operating within its jurisdictional boundaries is needed. Maintenance of current information with respect to business, trade, service, commercial and professional activities carried on within the City allows the City to carry out the duties and authorities delegated to it by the Washington State Constitution and the laws of the State of Washington as a non-charter code city. Such information can best be accumulated and maintained on a current basis through the establishment of a regulatory program for the license of business activities. The business license program is hereby established to protect the public and promote economic development and not intended to benefit any individual or class.

5.04.015 City power to license.

The provisions of this chapter shall be deemed an exercise of the power of the city to license business activities that are lawful under federal, state, and local laws and regulations for revenue.

5.04.020 Definitions.

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

A. “Adult Business” means: 1) any business where “adult entertainment” as defined in MVMC 5.06.020 requiring licensure under that Chapter is provided, and 2) any business where an “adult entertainment business/use” as defined in MVMC Chapter 5.13.010 requiring licensure under that Chapter is provided, and 3) any business that displays, exhibits, exposes or maintains upon any premises to which members of the public are admitted a “panoram” device as defined in MVMC 5.56.010 requiring licensure under that Chapter.
B. "Business" "occupation" or "pursuit" means and includes all activities, occupations, trades, pursuits, professions, and matters located or engaged in within the City with the object of gain, benefit, or advantage to the applicant for business license or other person, directly or indirectly, whether part-time or full-time, whether resident or nonresident.

C. "Business license" means the approval given by the City to a business to conduct the type of business for which was applied. "Business license" also means the document issued to a business providing proof of the business having been properly licensed with the City for the activity for which was applied.

D. "Business Licensing Service" or "BLS" means the office within the state Department of Revenue providing licensing services to the City.

E. "City" means the City of Mount Vernon, Washington.

F. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

G. "Engage in business" or "engaging in business activities" means commencing, conducting or continuing in business, and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves up to the public as conducting such business. F. "Person" "firm" or "corporation" herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

H. "Licensing Authority" means the City of Mount Vernon’s Finance Director or any duly authorized representative.

I. "Person" or "entity" herein used interchangeably, means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, corp partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

5.04.030 Business license required – Fee and Posting.

A. Any person or entity that engages in any business, occupation, home occupation or pursuit, including non-profit activities, within the City must license that business with the City’s business licensing program. To license under the program a person must submit a Business License Application to the Business Licensing Service and pay the applicable City license fee of $50, all late fees due and the BLS handling fee authorized by RCW 19.02.075 adopted herein by this reference as now or hereafter amended.

B. A business license will be issued to a business that has been approved by the City.

C. A business license must be posted in a conspicuous location at the physical place of business. In the case of a non-resident business conducting business within the City, the business license must be present at the location business is being conducted.

5.04.040 Program application, renewal, delinquency and cancellation.
A. A person must register a business with the city program by submitting a Business License Application to the Business Licensing Service (BLS), in coordination with the City Clerk, giving such information as is deemed reasonably necessary to enable the enforcement of this chapter and to complete the application process through BLS.

B. If a business is located at two or more separate locations within the City, a separate application filing and business license is required for each business.

C. If more than one business is conducted or operated on premises, a separate business license is required for each business that meets the requirements for business license. Each business owner must separately register a business with the program.

D. A business license may transfer with change of a business location. A person engaged in business within the City must notify the Business Licensing Service of a change of business location within 30 days of the location change. The Business Licensing Service will determine if the change of location may be transferred or if conditions require submitting a new application and re-approval of the licenses of the business.

E. A person who has registered a business under the City’s program must renew the license on an annual basis, on or before the expiration date established by the Business Licensing Service in order to continue conducting business in the City.

1. Renewal requires payment of the City license fee of $50, all late license fees due, and the BLS handling fee authorized by RCW 19.02.075

2. Failure to renew the license by the expiration date may accrue the BLS late renewal penalty authorized under RCW 19.02.085 adopted herein by this reference as now or hereafter amended.

3. A license that remains delinquent for at least 120 days past expiration is considered to be abandoned and may be cancelled by the City. A cancelled license may require submitting a new application to the Business Licensing Service, and re-approval of the business by the City to resume conducting business in the city.

F. A person engaged in business within the City must comply with all applicable City ordinances and code provisions, and State and Federal laws.

5.04.042 License- Application Procedures for Adult Businesses

A. No license or permit required for Adult Businesses by this title shall be issued to a person or entity unless written application has been made with the licensing authority which complies with this Chapter. The licensing authority shall provide application forms for each Adult Business license/permit required under this title, which shall require such information as the licensing authority deems appropriate, in addition to the information required by the various licensing/permit provisions of this title, as now existing or hereafter amended.

B. The applicant must complete and sign the application. If the application is for a partnership, a partner must sign and the names of the partners in full shall be given with their current residences. If the application is for a corporation, an authorized officer thereof must sign and the names of the current residences of all of the officers and directors or trustees of the corporation shall be given together with the location of the principal office or place of business of such corporation.
C. For those licenses which require an investigation, such investigation shall be conducted by the Mount Vernon Police Department in accordance with the criteria outlined in MVMC 5.04.047. The investigation shall include fingerprinting the applicant and, to the extent practicable, a full investigation of the truth of the statements in the application and all other matters which might tend to aid in the determination of whether to grant the license/permit. The Mount Vernon Police Department shall inform the licensing authority in writing within 30 days of receipt of the application as to the results in its investigation and its recommendation as to the disposition of the application. The Mount Vernon Police Department may request an extension to complete his investigation of no more than 30 days, which request shall be granted upon a showing of reasonable cause.

D. For those licenses or permits which require additional reviews or inspections for compliance with appropriate codes for building, zoning, fire and health or any other statute or regulation, each appropriate department director will, within 30 days after receipt of a copy of the application from the licensing authority, inform the licensing authority in writing of the results of their respective inspections and their recommendations as to the disposition of the application. A department director may request an extension not to exceed 30 days for the purpose of completing the review or inspection, which request shall be granted upon a showing of reasonable cause.

E. No license/permit required for an Adult Business shall be issued to the following persons:

1. Any person who is under 18 years of age at the time of application if the person seeks a licensure for an Adult Business, Adult Business Manager, Adult Business Employee, or Adult Business Entertainer under this Title.

2. In the event a person seeks a license for an Adult Entertainment Dance Studio as defined in MVMC 5.06.020 C or an Adult Business license as required in Chapter 5.13 MVMC, any person who has been convicted or has pending a felony or misdemeanor charge, excluding minor traffic violations, if the felony or misdemeanor for which he or she was convicted or charged directly relates to the license sought or any activity to be conducted hereunder, and

   a. The time elapsed from the felony is less than five years from date of application; or

   b. The time elapsed since the misdemeanor is less than three years from date of application.

“directly relates” as set forth in this subsection shall include but not be limited to the following prior convictions: prostitution, indecent exposure, patronizing a prostitute, permitting prostitution, lewd conduct, communication with a minor for immoral purposes, a “sex offense” as defined in RCW 9A.44.128 as now or hereafter amended, and criminal offenses involving narcotics including offenses of the Washington State Uniform Controlled Substances Act, Chapter 69.50 RCW.

3. Any person who is not qualified under any specific provision of this title for any particular license/permit for which application is made.

4. Any partnership or corporation having as a partner, member of the board of directors, corporate officer or stockholder holding over 20 percent of the stock, any one of whom does not meet the qualifications of this section.
5. Any person whose license/permit is under suspension at the time of application for a license/permit.

6. Any person who has had a license/permit revoked within a period of six months prior to the date of making application for a license/permit hereunder.

7. Any person who at the time of application is in default in the payment of any sum due the City of Mount Vernon for any license/permit.

8. Any person who has any outstanding penalties or fines related to any license/permit issued by the City of Mount Vernon.

F. In the event a person seeks a license for an Adult Entertainment Dance Studio as defined in MVMC 5.06.020 C or an Adult Business license as required in Chapter 5.13 MVMC, the licensing authority shall have discretionary authority to issue or deny a license/permit to any person who has been convicted of a felony if the felony for which convicted directly relates to the license sought or any activity to be conducted hereunder, and the time elapsed from the felony is greater than five years but less than 10 years. This subsection shall not preclude the consideration of any prior conviction of a felony or misdemeanor as a factor in determining whether or not a license or permit should be issued. “Directly relates” as set forth in this subsection shall include but not be limited to the following prior convictions: prostitution, indecent exposure, patronizing a prostitute, permitting prostitution, lewd conduct, communication with a minor for immoral purposes, a “sex offense” as defined in RCW 9A.44.128 as now or hereafter amended, and criminal offenses involving narcotics including offenses of the Washington State Uniform Controlled Substances Act, Chapter 69.50 RCW.

G. No license/permit shall be issued unless the premises where the activity is to be conducted complies with the requirements of all governmental agencies, including, but not limited to, federal, state, city and county laws or ordinances relating to buildings, fire, health, sanitation, zoning, taxation, public safety, and all other requirements and conditions specifically set forth in other sections of this title. Issuance of a license/permit shall not be deemed to constitute approval or waiver of non-compliance by the applicant.

5.04.045 Adult Business License Application- Form and Content

All applications form for license or permit required for Adult Businesses by this title shall be designed by the licensing authority. Such applications shall contain at the minimum the required items set forth in Chapter 5.06 MVMC; and Chapter 5.13 MVMC including:

A. The true name, home address, telephone number, and age of the applicant;

B. The name, address, and telephone number of the business premises or proposed business premises if different than the response given in MVMC 5.04.045 A;

C. Whether the applicant is a sole proprietorship, partnership or corporation. If a partnership, the application shall set forth names, residence addresses and telephone numbers of all persons, whether general or limited partners, sharing in the profits of said business and the respective ownership share of each. If a corporation, it shall set forth the name, residence address and telephone number of each of its officers, directors and shareholders, and the number of shares held by each if there are fewer than 10
shareholders. It shall set forth all persons having any interest in the real or personal property at the premises, and any persons sharing in the proceeds of the business;

D. If the applicant is a sole proprietorship or a partnership, stating whether the proprietor or the partners are of legal age;

E. The principal occupation of the proprietor of the proposed business if a sole proprietorship; if a partnership, the principal occupation of all partners; and if a corporation, the principal business enterprises of such corporation;

F. All assumed names or aliases which have been or are used by any person whose name appears on the application;

G. Name, address and telephone number of any registered agent required under RCW 23A.08.090;

H. Date and place of incorporation or organization;

I. Name, address and telephone number of a person to contact in case of an emergency;

J. When the adult business license or permit requires photographs or fingerprints:

1. Such applicants, or party signing the application, must submit to fingerprinting by the Mount Vernon Police Department or arrangements as prescribed by the Mount Vernon Police Department with other local law enforcement agencies, and such fingerprints shall be retained in the application file, a copy of which may be forwarded to the Washington State Patrol, Identification Section, or other agency.

2. The licensing authority may require that applicants be photographed when applications are submitted. If the licensing authority does not do so, each applicant, or party signing the application, shall submit four 2" x 2" photographs taken within the last six months of the date of application showing three full face and one full length front-facing shot. These photographs shall be provided at the expense of the applicant. The applicant shall certify under penalty of perjury that the photograph is a true, accurate and unaltered depiction of the applicant. The license/permit, when issued, shall have affixed to it a photograph of the applicant, or the party signing the application, shall be posted at all times in a conspicuous place in the establishment where such license/permit is enjoyed, and shall not be tampered with in any manner.

3. On renewal of a license/permit requiring photographs, applicants must be photographed as described in MVMC 5.04.045 K. Resubmission for fingerprinting or investigation by the Mount Vernon Police Department is in the discretion of the Mount Vernon Police Department if no significant changes have occurred; and

K. Such other information as the licensing authority may reasonably require in connection with the application.

5.04.047 Investigation Required- Adult Business License

If the Adult Business license or permit requires an investigation, the licensing authority shall forward to the Mount Vernon Police Department the applicant’s application with any supporting documents. The Mount Vernon Police Department shall investigate the following:
A. Whether any outstanding criminal violations/charges exist.

B. Whether any legitimate complaints exist regarding the applicant’s past business practices that would have any bearing or effect on the issuance of the license/permit under consideration.

C. Whether the person is prohibited by law from engaging in this type of activity.

D. Whether the application should otherwise be disapproved based upon public safety considerations.

Within 30 days following the receipt of the application from the licensing authority, the Mount Vernon Police Department shall make a written recommendation on the issuance of the license/permit as set out in MVMC 5.04.042. The Mount Vernon Police Department may request an extension to complete his investigation of no more than 30 days, which request shall be granted upon a showing of reasonable cause.

5.04.050 License – Nontransferable.

Unless approved as a result of a change of location under MVMC 5.04.040 D, no license issued to do business within the limits of the city shall be transferable. Only the individuals to whom the license is issued shall be eligible to operate under or display that license.

5.04.060 License – Fee provisions.

The license fee and tax herein levied shall be in addition to any license fee or tax imposed or levied under any law or any other ordinance of the city except as herein otherwise expressly provided.

5.04.070 Exempt from the City licensing program and fee.

Any person paying a business and occupation tax to the city under the terms of Chapter 5.48 MVMC, or under the terms of future ordinances of the city, shall be exempt from the payment of any license or tax under this chapter.

The requirements for a person or entity to be licensed through the City licensing program under this chapter and pay the fees do not apply to:

A. The performance of governmental or proprietary functions by any instrumentality of the United States, the State of Washington, or any political subdivision thereof, including City of Mount Vernon sponsored civic events.

B. The delivery of goods by vehicle to a customer or client by a business where the sale occurred on a business premises outside of the City and the only event occurring within the City is a delivery.

C. Accredited public or private schools, colleges, or universities, as to their education endeavors only; churches and other religious bodies, as to their religious activities only; political groups and organizations as to their political activities only.

D. Minors, a person under the age of 18, engaged in business or operating a business concern where no other person is employed by the minor.

E. Casual or isolated sales.
F. Where preempted by Federal or State constitutions or laws.

5.04.080 Nonprofit businesses and organizations.

Organizations exempt from federal income taxation under 26 USC 501(c)(3) or (4) must register under the business license program as provided in this chapter, but are exempt from paying the City license fee only. This does not constitute an exemption from all other applicable taxes and fees, including administrative handling, and penalty fees established by the State of Washington, pursuant to Chapter 19.02 RCW adopted herein by the reference as now or hereafter amended. Such organizations must be able to show satisfactory proof of such exempt status to the City to qualify for a no-fee city business license registration.

5.04.090 License term or expiration.

A business license is valid for a term of 12 months, unless otherwise prorated, and expires on the date determined by the Business Licensing Service.

5.02.100 License denial or revocation.

The city finance director shall examine each application filed for a license and shall make or caused to be made such further investigation of the application and the applicant as the city finance director shall deem necessary.
A. An application for license required under this chapter may be denied, revoked, or suspended by the City based on any of the grounds provided below:

1. If the person who obtains the license or any of the business officers, directors, agents, owners or employees of the business fail to comply with the requirements of this chapter.

2. If a person procures license by fraud or misrepresentation of fact, or the person who obtains the license or any of the business officers, directors, agents, owners or employees of the business obtain license so as to practice some illegal act or some act injurious to the public health, safety and welfare.

3. Whenever a person fails or refuses to pay the license or renewal fee.

4. Nothing in the proposal will violate provisions of the zoning ordinance for the city, MVMC Title 17, or any other law or ordinance.

B. The City shall not deny or revoke a business license without cause.

5.04.110 Finance Director as Licensing Authority.

A. The administration and interpretation of this chapter shall be accomplished under the direction of the Finance Director. It shall be the duty of the finance director to require all parties engaging in any business activity to procure such license, and should there be any license fee not paid by any person, it shall be the duty of the finance director to enforce collection thereof in the manner provided in this chapter. The finance director may make and publish rules of procedure and regulations for the administration and interpretation of this chapter. It is unlawful to violate or knowingly fail to comply with any such rule or regulation.
B. The finance director shall collect all license fees and shall issue licenses in the name of the city to all persons qualified under the provisions of this chapter and shall have the authority to:

1. Adopt Forms. Adopt application, license, renewal, annual return, and all other necessary or convenient forms and prescribe the information to be provided. Such required information shall include, but not be limited to, the residence of the applicant, the nature of his business or business activity in which he desires to engage, the place where it is proposed to be conducted and the amount of the fee prescribed by this chapter. If the finance director shall find the application to be correct, the finance director shall, upon the payment of the fee, issue a license in accordance herewith.

2. Obtain Endorsement. Submit applications, when deemed appropriate, to other city officials for their endorsements thereon as to compliance by the applicant with all city regulations which the officials have the duty of enforcing.

3. Investigate. Investigate and determine the eligibility of any applicant for a license, the amount of fees or other amounts due as prescribed herein, and the correctness of data submitted to the city.

4. Examine Records. Examine and audit the books and records of any applicant, licensee, or business when reasonably necessary to the administration of this chapter. The records of a business, including federal and state tax returns and invoices, shall be open for examination by the director or authorized agent at any time to the extent authorized by law. The finance director may require the attendance of any person at a time and place fixed by the finance director or authorized agent in accordance with and to the extent authorized by applicable law.

5. Give Notice. Notify any applicant of the acceptance or rejection of the application.

6. Regulate Form of Licenses. Ensure that each license is numbered, and shows the name of the licensee, and business address.

7. Keep Records and Deposit Funds. Keep full and accurate records of all funds received under the provisions of this chapter. Upon receipt of any license fee and/or penalties collected under the provisions of this chapter, the finance director shall deposit the same to the credit of the current expense fund.

8. Suspend or Revoke. The finance director shall have the authority to suspend or revoke any license or permit issued upon a showing of violation of any of the provisions of any license/permit ordinance under this Title; provided, however, that such suspension or revocation shall not relieve the licensee, or permit holder, of the other penalties provided for in this Title.

5.04.120 Requests for Finance Director review.

A. Any person aggrieved by a rule, ordinance, or decision made pursuant to this chapter and any person seeking a waiver or interpretation under this chapter may request finance director review of the same.

B. All requests for review and reasons thereof shall be communicated to the finance director or his/her designee. A record of any review which is approved by the finance director shall be created and maintained.
C. The finance director may require the person to submit background information and may hold a conference with the person. After review, and the conference if one is held, the finance director will make a determination regarding the issue of concern. This determination and the grounds for such a determination shall be recorded and records kept and made available at the city’s finance department.

D. Other than the issuance of a civil infraction, notice of violation pursuant to Title 19, or suspension or revocation of an Adult Business License or Permit when a procedure for such suspension and revocation is otherwise provided, a person aggrieved by a rule, ordinance, or decision made by the Licensing Authority shall appeal by filing a written request for appeal with the Licensing Authority within 15 calendar days after receiving or otherwise being served with notice of the Licensing Authority’s action. When the last day of the period so computed is a Saturday, Sunday, or state recognized holiday, the period shall run until 4:30 p.m. on the next business day. Failure to file a written request for appeal within time prescribed will result in the action becoming a final order and the appellant shall be bound thereby.

5.04.130 Violations – Penalties.
Any person violating or failing to comply with any of the provisions of this chapter shall be subject to the enforcement provisions contained in MVMC Title 19, Code Enforcement.

5.04.140 Licenses issued under prior law.

All licenses issued under the provisions of any ordinance repealed by the ordinance codified in this Chapter shall remain in force and effect until the expiration thereof unless sooner surrendered or revoked subject however to all other requirements of the City’s regulations and municipal code.

SECTION THREE. Final Ordinance. City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical or scrivener’s error.

SECTION FOUR. 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.

SECTION FIVE. Savings. All ordinances repealed by this ordinance, shall remain in force and effect until the effective date of this ordinance

SECTION SIX. 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 24 day of May, 2017.

[Signature]

H.L. BOUDREAU, Mayor

SIGNED AND APPROVED this 25 day of May, 2017.

[Signature]

DOUG VOLESKY, Finance Director

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Approved as to form:

City Attorney

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