ORDINANCE NO. 3535

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, REPEALING AND REENACTING ORDINANCE 3534 WITH FURTHER AMENDMENTS TO THE COMPREHENSIVE PLAN AND MOUNT VERNON MUNICIPAL CODE BY ADOPTION OF THE MOUNT VERNON SHORELINE MASTER PROGRAM

WHEREAS, Mount Vernon has been operating under Skagit County’s Shoreline Management Master Program since 1977; and

WHEREAS, the Shoreline Management Act (SMA) amendments of 2003, development and adoption of the Downtown and Waterfront Master Plan, on-going city-wide flood risk reduction planning activities, and the unique nature of Mount Vernon’s natural and built shoreline environments, together demonstrated a need to develop a Shoreline Master Program (SMP) specific to the City’s circumstances; and

WHEREAS, the SMA requires that local jurisdictions develop master programs that constitute use regulations for shorelines of statewide significance; and

WHEREAS, the deadline for Mount Vernon to adopt such a program is 2012; and

WHEREAS, Chapter 36.70A RCW, the Growth Management Act (GMA) mandates that the City of Mount Vernon maintain a Comprehensive Plan, which is a coordinated land use policy statement of the City, including policies directed at management of the City shorelines; and

WHEREAS, the GMA requires comprehensive plans and development regulations to be consistent; and

WHEREAS, the GMA also requires comprehensive plans to be both internally and externally consistent; and

WHEREAS, On December 3, 2009, 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 for the mandated sixty-day 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 Comprehensive Plan was conducted and, upon determination that no probable significant, potentially adverse environmental impacts would result from the amendment, a determination of non-significance was issued on February 4, 2010 and published on February 8, 2010, with no appeals having been filed prior to the close of the appeal period on February 23, 2010; and
WHEREAS, the requisite public hearing before the Planning Commission on August 3, 2010, which was continued to November 16, 2010, were preceded with appropriate notice, published on July 19, 2010 and November 1, 2010, respectively; and the requisite City Council hearing of December 1, 2010 was preceded with appropriate notice published on November 15, 2010; and

WHEREAS, the requirements for public participation in the development of this amendment as required by the GMA and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and,

WHEREAS, at the Planning Commission’s public hearing on November 16, 2010 the Planning Commission after fully, fairly, and carefully considering the public input and staff materials relevant to the amendment recommended that the City Council move to adopt the proposed amendment to the Land Use Element of the Comprehensive Plan; and

WHEREAS, the Mount Vernon City Council has reviewed the proposed amendments to the Comprehensive Plan and Title 15 of the Municipal Code and the Findings of Fact, Conclusions of Law, and Recommendations of the Planning Commission; and

WHEREAS, the City Council finds that all procedural requirements for adoption of the attached amendments of the Comprehensive Plan as set forth in Chapter 35A.63 RCW and Chapter 36.70A RCW, and as set forth in the State Environmental Policy Act and Chapter 15.06 of the Mount Vernon Municipal Code have been complied with, and that adequate environmental review has been given; and

WHEREAS the City Council finds that the amendment to the Comprehensive Plan and amendment to its Municipal Code Chapter 15.07 adopting a new Shoreline Master Program under Ordinance No. 3508, for the City reviewed and approved at the hearing on December 1, 2010 reflects the best interests of the citizens of the City of Mount Vernon, Washington, and reflects the desires of the public; and

WHEREAS the City forwarded the City Council approved Shoreline Master Program to the Department of Ecology for their required 30 day public comment period which ended on February 4, 2011 with no comments received by the Department of Ecology; and

WHEREAS as outlined in WAC 173-26-120, Ecology has made written findings and conclusions regarding the consistency of the amendment proposal with the policy of RCW 90.58.020 and applicable guidelines; and

WHEREAS on May 11, 2011 the City received the Department of Ecology’s letter approving the Shoreline Master Program Update subject to required changes from the Department of Ecology. The City is also suggesting changes for the purpose of further clarifying the Shoreline Master Program Update; and
WHEREAS the changes by both the City and the Department of Ecology were included in the submittal received by the City from the Department of Ecology on May 11, 2011 and were made available to the public for review; and

WHEREAS with the City Council’s acceptance of the required and suggested changes, the Shoreline Master Program will be determined to be final by the Department of Ecology following the Department of Ecology’s required sixty day appeal period; and

WHEREAS the City has determined that several of the changes required by the Department of Ecology and suggested by the City are substantive in nature and therefore under Resolution 491 require an additional public hearing before the City Council to consider and approve the changes thereby satisfying the requirements for public participation; and

WHEREAS the requisite City Council hearing of June 1, 2011 was preceded with appropriate notice published on May 17, 2011; and

WHEREAS the City Council at their meeting on June 1, 2011 approved the changes as submitted along with a request for additional changes; and

WHEREAS following the adoption of Ordinance No. 3534 staff met with representatives of Dike District 17 and 3, parties that previously provided input, and the Department of Ecology and concluded that additional changes to the Shoreline Use Tables are necessary to maintain consistency with stated regulations within the SMP, federal levee maintenance programs, and to protect the ability of the Dike Districts to improve, maintain and repair flood protection structures, as well as other minor changes within the Shoreline Modification Table related to docks and piers; and

WHEREAS the requisite City Council hearing of June 22, 2011 was preceded with appropriate notice published on June 7, 2011; and

WHEREAS, the proposed Shoreline Master Program is found to be in compliance with both the Washington State Growth Management Act and the Shoreline Management Act.

NOW, THEREFORE,

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

SECTION 1. That Ordinance No. 3534 is repealed in its entirety.

SECTION 2. The City Council adopts the Planning Commission’s Findings of Fact, Conclusions of Law, and Recommendations in their entirety attached hereto.
SECTION 3. 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 4. COMPREHENSIVE PLAN SHORELINE AREA GOALS
REPEALED The entire section, Shoreline Areas, of Element 2, the Land Use Element of the 2005 Comprehensive Plan of the City of Mount Vernon, as amended, consisting of Goals LU-6 through LU-14, is hereby repealed in its entirety.

SECTION 5. COMPREHENSIVE PLAN AMENDED
Exhibit 1 attached hereto and incorporated herein in its entirety by this reference is hereby adopted as the City of Mount Vernon Shoreline Master Program and the Goals included in Exhibit 1 shall be included within the Shoreline Areas Section of Element 2, the Land Use Element of the Comprehensive Plan of the City of Mount Vernon.

SECTION 6. City staff is hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION 7. CHAPTER 15.07 OF THE MOUNT VERNON MUNICIPAL CODE, AS ADOPTED UNDER ORDINANCE NO. 3534 IS REPEALED AND REENACTED
Exhibit 2 attached hereto and incorporated herein in its entirety by this reference is hereby adopted as the City’s Shoreline Master Program codified under Chapter 15.07 of the Mount Vernon Municipal Code. Chapter 15.07 of the Mount Vernon Municipal Code shall be re-titled and now and shall read as follows:

Chapter 15.07
CITY OF MOUNT VERNON SHORELINE MASTER PROGRAM
Sections:
15.07.010 Adopted.
15.07.020 Violations – Penalties.
15.07.030 Fees.

15.07.010 Adopted Shoreline Master Program.
The City of Mount Vernon Shoreline Master Program is set forth in Exhibit 2, attached to Ordinance No. 3535. A copy of the City of Mount Vernon Shoreline Master Program
(and any amendments thereto) is available at the Mount Vernon Community and Economic Development Department.

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

15.07.030 Fees.
Applications for the various actions under the shoreline management master programs shall be accompanied by nonrefundable fees as set forth in MVMC 14.15.010.

SECTION 6. SEVERABILITY
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 7. EFFECTIVE DATE
The Shoreline Master Program shall become effective immediately upon final approval and adoption by the Department of Ecology, pursuant to RCW 90.58.090.

PASSED AND ADOPTED this 22nd day of June 2011.

________________________________
BUD NORRIS, Mayor

SIGNED AND APPROVED this ____ day of June, 2011.

________________________________
ALICIA D. HUSCHKA, Finance Director

Approved as to form:
Kevin Rogerson, City Attorney

Published __________________