MONROE CITY COUNCIL

Agenda Bill No. 14-039

TITLE:	***Approval of Ordinance No. 003/2014, Amending MMC 5.02, Business Licenses and 6.04.040, Public Nuisances Offending Morals and Decency; First Reading***

DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
03/04/2014	Planning Department	Paul Popelka	Paul Popelka	**New Business #2**

Discussion: 03/04/14
Public Hearing – Plan. Com.: N/A.
Public Hearing – Council: 03/11/14 *(scheduled and noticed)*
First Reading: 03/04/14

Attachments: 1. Proposed Ordinance No. 003/2014 (Exhibits A & B)

DESCRIPTION/BACKGROUND
Adoption of this proposed ordinance modifies sections of the Monroe Municipal Code to require that all business licenses be in compliance with state and federal law. The ordinance also provides an appeal mechanism for individuals that are denied business licenses. This action prohibits marijuana related businesses since marijuana is classified as a Schedule I controlled substance for which no lawful use exists. Public hearings for marijuana-related land uses were held by Council on January 14, and February 4, 2014, where public comments were strongly opposed to establishing marijuana businesses.

Adoption of this ordinance will effectively prohibit the establishment of marijuana-related businesses, and any other businesses in violation of state or federal law, within the city. A public hearing is scheduled for March 11, 2014, to solicit public testimony on this proposed ordinance.

IMPACT – BUDGET
N/A.

TIME CONSTRAINTS
N/A.

REQUESTED ACTION

Accept as first reading Ordinance No. 003/2014, Amending MMC 5.02, Business Licenses, and 6.04.040, Public Nuisances Offending Morals and Decency.

ALTERNATIVES TO STAFF RECOMMENDATION
None.

CODE

CITY OF MONROE
ORDINANCE NO. 003/2014

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING MMC CHAPTER 5.02, BUSINESS LICENSES, TO REQUIRE COMPLIANCE WITH STATE AND FEDERAL LAW; TO PROVIDE AN APPEAL MECHANISM FOR INDIVIDUALS DENIED BUSINESS LICENSES; AMENDING THE PROVISIONS OF MMC SECTION 6.04.040, PUBLIC NUISANCES OFFENDING MORALS AND DECENCY, TO ADD A NEW SUBSECTION (D) DECLARING BUSINESSES OPERATING IN VIOLATION OF STATE AND/OR FEDERAL LAW TO BE PUBLIC NUISANCES; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE

WHEREAS, pursuant to Initiative I-502, the Washington State Liquor Control Board is proceeding with the licensing of marijuana production, processing and distribution businesses; and

WHEREAS, the Federal Controlled Substances Act, 21 USC Chapter 13, § 801, et seq, continues to classify marijuana as a Schedule I controlled substance for which no lawful use exists; and

WHEREAS, the City of Monroe is unable to resolve this conflict between state and federal law; and

WHEREAS, public comment presented at a series of public hearings in the City of Monroe indicate the strong concern and opposition of citizens regarding the establishment of a business selling marijuana in violation of federal law and the potential impact of that business upon the City and its citizens; and

WHEREAS, the City Council deems it to be in the public interest to clarify that its ordinances prohibit the issuance of a business license to any business which operates in violation of local, state or federal law; and that such businesses are public nuisances which may be abated, in addition to any other remedy available to the City.

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

Section 1. Amendment of Chapter. MMC Chapter 5.02, Business Licenses, is hereby amended in accordance with the provisions of the attached Exhibit A, incorporated by this reference as fully as if herein set forth. By way of illustration and not limitation, the provisions of Exhibit A are intended to provide an appeal mechanism for any applicant denied a business license and clarifying that businesses in violation of local, state and federal law are in violation of the City's business license provisions and accordingly, may not operate in the City of Monroe.

Section 2. Amendment of Section. MMC, Section 6.04.040, Public Nuisances Offending Morals and Decency, is hereby amended in the form shown on the attached Exhibit B, by the addition of a new subsection D clarifying that businesses operating in violation of a local, state or federal law are public nuisances subject to abatement.

Section 3. 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.

Section 4. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this _____ day of _____, 2014.

1st Reading: March 4, 2014
2nd/Final Reading:
Published:
Effective:

CITY OF MONROE, WASHINGTON:

_____
Geoffrey Thomas, Mayor

(SEAL)

ATTEST:

_____
Elizabeth M. Smoot, CMC, City Clerk

APPROVED AS TO FORM:

_____
J. Zachary Lell, City Attorney

EXHIBIT A

MONROE MUNICIPAL CODE

Chapter 5.02
BUSINESS LICENSES

Sections:

5.02.010 Purpose.
5.02.020 Definitions.
5.02.025 Administration.
5.02.030 License required.
5.02.040 Exemptions.
5.02.050 Issuance of licenses.
5.02.060 Posting of license.
5.02.070 License not transferable.
5.02.075 Ownership change.
5.02.080 Fraudulent use of business license.
5.02.090 Denial or [~~R~~]revocation of business license.
5.02.100 License renewal.
5.01.110 Compliance with codes and laws required.
5.02.115 Compliance with other codes.
5.02.120 Notice of noncompliance -- Revocation -- Final action.
5.02.130 Appeal to hearing examiner.
5.02.140 Violation — Misdemeanor.

5.02.010 Purpose.
The purpose of this chapter is to provide a means for obtaining public information and compiling statistical information on existing and new business in the city to regulate and ensure the legal conduct of businesses and to assist in the effective administration of health, fire, building, zoning and other codes of the city.

5.02.020 Definitions.
For the purposes of this chapter, the words set out in this section shall have the following meanings:

A. “Engaged in business” means commencing, conducting or continuing in business or carrying on any form of activity to gain, profit or advantage, whether direct or indirect, with an office or place of business being located within the city.

B. “Person” means any individual receiver, assignee, trustee in bankruptcy, trust, estate, 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, and includes the United Sates or any instrumentality thereof.

5.02.025 Administration.

The city of Monroe city administrator or designee shall administer this chapter and shall have the authority to develop and implement administrative procedures to manage and enforce this chapter.

5.02.030 License required.

On or after the effective date of the ordinance codified in this chapter, all persons engaged in business in the city shall apply for a business license. No person shall engage in any business within the city without first having secured a license to do so as hereinafter provided unless exempted in this chapter.

5.02.040 Exemptions.

A. The provisions of this chapter shall not apply to:
   1. Minors doing business or operating a business concern where no other person is employed by the minor;
   2. The United States or any instrumentality thereof and the state of Washington or any municipal subdivision thereof;
   3. Participants in a special event pursuant to Chapter 5.28 MMC where the following conditions have been met:
      a. The participant is identified on a list of participants to be provided by the applicant for a license under Chapter 5.28 MMC to the city administrator or designee at least three days in advance of the event;
      b. The participant to be exempt participates in no more than two such street fair events in any calendar year;
   4. Persons whose sole activity is the rental of real property;
   5. Participants in community-oriented open-air markets operated in accordance with MMC 18.12.190(B);
   6. Any person consigning items for sale in a retail shop possessing a valid city of Monroe business license.

B. The license fee portion of this chapter shall not apply to:
   1. Fraternal benefit associations or societies as defined in RCW 48.36A.010;
   2. Nonprofit religious organizations;
   3. Nonprofit associations, clubs, or corporations maintained for the purpose of organized sports, charity, public school-related activities or municipal corporation-related activities, including police and fire department reserve organizations;
   4. Persons required to obtain a license and pay a license fee for a specific activity or business under other provisions of this code who have indeed procured such a license and aid the fee for such license. **Persons licensed by any other public entity shall comply with the provisions of this Chapter and state and federal law when engaged in business in the City of Monroe.**

5.02.050 Issuance of licenses.

Any new nonexempt business shall make application for a business license prior to commencing business in the city. Application for license shall be accomplished by filing a master application through the State Department of Licensing's Master License Service. Persons applying for a license must pay a fee as established by the city council by periodic resolution and the Master License Service's handling fee.

5.02.060 Posting of license.
Each person required to obtain a business license under this chapter shall at all times post said business license in the place of business for which it is issued.

5.02.070 License not transferable.
When the place of business of a person required to obtain a business license under this chapter is changed, the person shall inform the Master License Service of the change. A change of place of business may require the filing of a new master application with the Master License Service. Upon approval by the city of the new place of business, a new license shall be issued for the person's new place of business.

5.02.075 Ownership change.
When a licensed business changes ownership, the license of the previous owner may not be transferred to the new owner. The new owner shall apply for a license for the business by filing a master application with the Master License Service.

5.02.080 Fraudulent use of business license.
No person holding a city business license shall suffer or allow any other person for whom a separate license is required to operate under or display such person's license and no person may maintain a business license obtained through a false or fraudulent application or return of any false statement or representation in or in connection with such application or return for such business license.

5.02.090 Denial or [~~R~~]revocation of business license.
The city administrator or designee may **deny or** revoke the license issued to any person required to obtain a business license who is in default in any payment of any license fee or who shall fail to comply with any of the provisions of this chapter. Notice of such **denial or** revocation shall be mailed to the person by the city administrator or designee and on and after the date thereof any such person who continues to engage in business shall be deemed to be operating without a license and shall be subject to any or all penalties provided for in this chapter.

5.01.100 License renewal.
All businesses shall renew their business license each year. Businesses must pay a renewal fee as established by the city council by periodic resolution and the Master License Service's handling fee.

5.02.110 Compliance with codes and laws required.
Notwithstanding any contrary provision hereof, a business license issued under this chapter may not be issued to any person using or occupying any real property in violation of the provisions of **local ordinance, and state and federal law, as well as** the Monroe zoning code and all amendments thereto.

5.02.115 Compliance with other codes.

The issuance of a business license under this chapter shall not relieve the applicant of complying with other provisions of the Monroe Municipal Code or other state or federal laws, rules, and regulations.

5.02.120 Notice of noncompliance -- Revocation -- Final action.

A pending application for renewal under this chapter shall be deemed in compliance with this chapter unless the applicant is notified by the city administrator or designee in writing that said application may not be granted because of noncompliance with the provisions of this chapter. In the event such notice is given, the applicant shall have ninety days from the date of such notice to comply with any section violated under this chapter prior to final action upon said application for renewal unless an extension for compliance is granted by the council. **Provided, however, that activities in violation of local, state or federal law may be abated in accordance with MMC Chapter 6.04.**

5.02.130 Appeal to hearing examiner.

Any person aggrieved under the provisions of this chapter may appeal to the hearing examiner from such finding of the city administrator or designee within fifteen days from the time as such taxpayer was given written notice of noncompliance with the provisions of this chapter **or an applicant is given written notice of denial**. The city administrator or designee shall, as soon as practical, fix a time and place for hearing of such appeal, which time shall not be more than thirty days after filing a notice of appeal and the hearing examiner shall cause a notice of the time and place thereof to be mailed by certified mail, return receipt requested, to the person appealing the city administrator or designee's proposed action. At such hearing, the **applicant or** taxpayer shall be entitled to be heard and to introduce evidence[~~ IN HIS~~] **on their** own behalf. The hearing examiner shall thereupon make a finding and notify the appellant thereof by mail. The city may, before the appeal is to be heard,[~~ BY~~] subpoena **and** require the attendance at such hearing of any person and may require such person to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of such person pertinent to the appeal and it shall be unlawful for such person to fail or refuse to do so.

Hearing examiner action shall be final unless within thirty days thereof an appeal has been filed with Snohomish County superior court by writ of certiorari.

5.02.140 Violation — Misdemeanor.

Any violation of this chapter shall be deemed a misdemeanor and shall be punished by a fine not to exceed three hundred dollars or by imprisonment not to exceed ninety days or by both such fine and imprisonment, and any person who engages in or carries on any business subject to the provisions of this chapter without obtaining a business license, or who carries on such activities in violation of this chapter, shall be guilty of a separate violation of this chapter for each day during which the business is so engaged in or carried on, and any **applicant or** taxpayer who fails or refuses to pay the business license fee or any part thereof on or before the due date shall be deemed to be operating a business without having a proper license to do so.

This violation is separate from and in addition to any other remedy which the City may have.

EXHIBIT B

MONROE MUNICIPAL CODE

Chapter 6.04
NUISANCES

6.04.040 Public nuisances offending morals and decency.

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of MMC 6.04.020:

A. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling;

B. Any place or premises where city ordinances or laws relating to public health, safety, peace, morals or welfare are openly, continuously or repeatedly violated;

C. Any place or premises resorted to for the purpose of drinking intoxicating liquor or fermented malt beverages in violation of the laws of the state and ordinances of the city[.]**; and**

D. Any place or premises utilized for the operation of a business or other endeavor in violation of the provisions of local ordinance or state or federal law.