

CITY OF MONROE
ORDINANCE NO. 004/2021

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING MONROE MUNICIPAL CODE CHAPTER 22.40, NONCONFORMING USE AND RESUE STANDARDS; ALLOWING FOR EXPANSIONS OF NONCONFORMING USES WITHIN THE TOURIST COMMERCIAL ZONING DISTRICT; SETTING FORTH SUPPORTIVE FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City adopted amendments in 2019 repealing MMC Titles 17, 18, 19, 20 and 21 and replacing with Unified Development Regulations, Title 22 MMC, effectively creating a new zone, Tourist Commercial; and

WHEREAS, at present, eighty percent of the current uses within the Tourist Commercial zone are nonconforming; and

WHEREAS, established businesses within the Tourist Commercial zone are unable to expand their businesses; and

WHEREAS, the City of Monroe is proposing text amendments to Monroe Municipal Code (MMC) chapter 22.40, Nonconforming Use and Reuse Standards, to allow expansions of legally established nonconforming uses within the Tourist Commercial zone; and

WHEREAS, an evaluation of the environmental impacts of the amendments to MMC Chapter 22.40, resulted in the issuance of a Determination of Non-Significance (DNS) on March 22, 2021, with no appeals filed; and

WHEREAS, pursuant to RCW 36.70A.106, the City provided the Washington State Department of Commerce with notice of intent to adopt the amendments to its development regulations and was granted a 14-day expedited review; and

WHEREAS, on April 12, 2021, the Monroe Planning Commission held a study session to discuss the proposed amendments to MMC Chapter 22.40; and

WHEREAS, the City issued a Notice of Public Hearing on April 15, 2021, which was at least ten calendar days prior to the date of the public hearing, pursuant to MMC 21.40.020(A)(1); and

WHEREAS, MMC subsection 22.84.060(B)(2) necessitates that amendments to the Unified Development Regulations (MMC Title 22) requires Planning Commission review and recommendation; and

WHEREAS, the Monroe Planning Commission held a duly noticed public hearing on April 26, 2021, to accept public testimony on the proposed code amendments; and

WHEREAS, at the conclusion of the April 26, 2021, public hearing, the Planning Commission voted unanimously to recommend approval of the proposed amendments; and

WHEREAS, the Monroe City Council conducted a first reading of the proposed ordinance on May 11, 2021, and second reading on May 25, 2021, to discuss the proposed amendments to the Monroe Municipal Code at duly noticed public meetings.

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

Section 1. Findings. The above recitals and the contents of Exhibit A and Exhibit B attached are hereby adopted as legislative findings in support of the amendments set forth in this ordinance. The City Council further adopts by reference the findings contained in the Planning Commission's April 26, 2021, recommendation and finding of facts.

Section 2. Amendment of MMC Section 22.40. Monroe Municipal Code Section 22.40.070, Nonconforming uses, is hereby amended by the addition of a new subsection (A)(1)(c) to provide in its entirety as follows:

22.40.070 Nonconforming Uses.

A.1.c Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and
- v. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

Section 3. Copy to Commerce. Pursuant to RCW 36.70A.106, a true and correct copy of this ordinance shall be transmitted to the Department of Commerce, Growth Management Services Division, within ten days after adoption.

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

ADOPTED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 25 day of May, 2021.

First Reading: May 11, 2021
Adoption: May 25, 2021
Published: May 28, 2021
Effective: June 2, 2021

CITY OF MONROE, WASHINGTON:


Geoffrey Thomas (Jun 2, 2021 17:05 PDT)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:



Rabecca Hasart, Interim City Clerk


Zach Lell (Jun 2, 2021 15:17 PDT)

J. Zachary Lell, City Attorney



AGENDA BILL

Meeting Date: May 11, 2021

Staff Contact: Amy Bright, Associate Planner

Department: Community Development

SUBJECT: Ordinance No. 004/2021, Adopting Zoning Amendments to Chapter 22.40 MMC, Nonconformance and Reuse Standards; First Reading

PREVIOUS DISCUSSION:

CC: 1/19/2021

PC Introduction: 4/12/2021

PC Public Hearing: 4/26/2021

PUBLIC HEARING(S):

PC: 4/26/2021

REQUESTED ACTION:

Move to accept as first reading Ordinance No. 004/2021, amending Chapter 22.40 MMC, Nonconformance and Reuse Standards; allowing for expansions of legal nonconforming uses within the Tourist Commercial zone; setting forth legislative findings; providing for severability; and establishing an effective date.

POLICY CONSIDERATIONS:

Pursuant to MMC Table 22.84.060(B)(2): Decision Making and Appeal Authorities, the City Council is the final decision authority for amendments to the Unified Development Regulations. The City Council shall approve, approve with conditions, remand to the recommending authority for further proceedings, or deny the amendment.

DESCRIPTION/BACKGROUND:

The purpose of this code amendment is to allow for expansions of legal nonconforming uses within the Tourist Commercial Zone. The 2018 adoption of the Unified Development Regulations changed the allowed uses within the Tourist Commercial zone. At present, eighty percent of the current uses within the Tourist Commercial zone are nonconforming.

The amendments to Monroe Municipal Code (MMC) 22.40 Nonconformance and Reuse Standards, propose revisions to all for expansions of legal nonconforming uses within the Tourist Commercial zone. The Tourist Commercial zone contains existing established uses that would otherwise not be permitted to expand.

EXHIBIT A

Review and Public Notice

Discussions regarding amending 22.40 MMC, Nonconforming Use and Reuse Standards text amendments were conducted at the April 12, 2021 and April 26, 2021 Planning Commission meetings. During these meetings, the Planning Commission recommended the proposed text amendments as written in the attached Findings of Fact.

The proposed amendments were transmitted to the Washington State Department of Commerce for state agency review, in accordance with RCW 36.70A.106, on March 31, 2021. Expedited review (14 days rather than 60 days) was requested.

Notice of Public Hearing was provided in accordance with MMC 22.84.050(C) by posting the notice at City Hall and the Monroe Library, and publishing the notice in the Everett Daily Herald on April 15, 2021. Expedited review, with no comments, was granted on April 14, 2021.

A NOA/SEPA Determination of Non-Significance (DNS) was issued on the proposed code amendments on March 22, 2021. The public comment and appeal periods for the NOA/DNS ended at 5:00 PM on April 6, 2021. No comments or appeals were received.

The public hearing on this matter was held in front of the Planning Commission on April 26, 2021. No written comments were received prior to the public hearing.

The Planning Commission recommended that the Monroe City Council **approve** the proposed amendments to Monroe Municipal Code Chapter 22.40.070 adding a new subsection (c):

c. Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;*
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;*
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;*
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and*
- iv. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.*

The proposed code amendments would allow the expansion of existing nonconforming uses within the Tourist Commercial zone. At present, eighty percent of established uses within the TC zone are nonconforming due to changes to the Monroe Municipal Code during the Unified Development Regulations update.

The proposed amendments would:

- Actively support the creation and ongoing success of business improvement organizations dedicated to downtown and other commercial areas.

EXHIBIT A

- Ensure that the amount of land zoned for business and industrial use is adequate to meet policy objectives and employment forecasts.
- Provide a supportive business environment in Monroe.
- While First Air Field remains an airport, encourage economic development opportunities and aviation related uses adjacent to airports and promote the efficient mobility of goods and services region-wide consistent with the economic development chapter and the regional transportation strategy.
- Support the creation of business improvement areas to aid in promotion, maintenance, long-term planning, safety and ongoing success of City of Monroe businesses.
- Allow established uses to remain and to grow.

FISCAL IMPACTS:

None

TIME CONSTRAINTS:

None

ALTERNATIVES TO REQUESTED ACTION:

1. Discuss the proposed code amendments and identify areas of concern.
2. Remand the proposed amendments back to the Planning Commission for additional deliberation.

ATTACHMENTS:

[Proposed Text Amendments S&D](#)

[CA2021-01-Nonconformance and Reuse Amendment-Findings of Fact 4-26-2021](#)

[Ordinance 004-2021 Nonconforming Use and Reuse Standards Amendment](#)

Chapter 22.40 NONCONFORMANCE AND REUSE STANDARDS

Sections:

- **22.40.010 Purpose.**
- **22.40.020 Applicability.**
- **22.40.030 General provisions.**
- **22.40.040 Preexisting legal lots of record.**
- **22.40.050 Nonconforming lots.**
- **22.40.060 Nonconforming structures.**
- **22.40.070 Nonconforming uses.**
- **22.40.080 Nonconforming sites.**
- **22.40.090 Enforcement.**

22.40.010 Purpose.

The purposes of this chapter are established as follows:

- A. To establish the legal status of a nonconforming use, site, or structure by creating provisions through which a nonconforming use, site, or structure may be maintained, altered, reconstructed, expanded, or terminated.
- B. To establish the legal status of nonconforming lots and create provisions through which a nonconforming lot may be maintained or developed.
- C. To encourage the adaptive reuse of existing structures.
- D. To identify standards for determining which nonconforming structures, sites, lots, and uses must be brought into conformance with the provisions of all applicable code requirements. (Ord. 005/2019 § 10 (Exh. B))

22.40.020 Applicability.

All nonconformances shall be subject to the provisions of this chapter. The provisions of this chapter do not supersede or relieve a property owner from compliance with the following:

- A. The requirements of the International Building and Fire Codes; and
- B. The provisions of this code beyond the specific nonconformance(s) addressed by this chapter. (Ord. 005/2019 § 10 (Exh. B))

22.40.030 General provisions.

A. Any legally established nonconformance may be maintained in legal nonconforming status as long as no new nonconformances are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost under any of the circumstances set forth in this section. If legal nonconforming status is lost, the structure, site, lot, or use must be brought into conformance with all applicable code requirements.

EXHIBIT A

- B. Development or modification of a legal nonconforming structure, site, lot, or use shall not increase or expand the degree of nonconformity.
- C. A tract created to protect critical areas, provide open space, or as a public or private access tract shall not be considered legally buildable.
- D. No nonconforming structure, site, lot, or use shall be created as a result of the division of land or any modification of a lot line through any subdivision or lot line revision.
- E. Change of tenancy, ownership, or management shall not affect legal nonconforming status.
- F. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any legal nonconforming building or part thereof declared to be unsafe by order of the city to protect the public safety.
- G. This chapter shall govern nonconforming structures, sites, lots, and uses within any critical area, unless Chapter 22.80 MMC, Critical Areas, establishes more specific standards.
- H. Legal nonconforming signs are regulated pursuant to Chapter 22.50 MMC, Signs. (Ord. 005/2019 § 10 (Exh. B))

22.40.040 Preexisting legal lots of record.

A lot, tract, or parcel is considered a legal lot of record if it was subdivided in compliance with applicable laws regarding platting at the time of its creation.

A. A lot, tract, or parcel shall be deemed a legal lot of record if it meets one of the following criteria:

1. Any lot platted or legally created under a Monroe subdivision ordinance on or after December 31, 1968; or
2. Any lot that was a legal lot of record under the regulations and standards of Snohomish County prior to annexation into the city of Monroe; or
3. Any parcel divided by metes and bounds, or fractional section description, or platted and recorded with the Snohomish County auditor prior to December 31, 1968; or
4. Any parcel defined by metes and bounds, or fractional section description, and conveyed by notarized deed prior to December 31, 1968.

B. Pursuant to RCW 58.17.210, the city shall not issue any building or development permits for lots, tracts, or parcels divided in violation of state or local land use regulations. The applicant shall bear the burden of proving that a lot, tract, or parcel is legal. (Ord. 005/2019 § 10 (Exh. B))

22.40.050 Nonconforming lots.

EXHIBIT A

A. *Legal Nonconforming Lots.* Legal lots of record that do not meet the requirements set forth in this title are considered legal nonconforming lots.

1. *Alterations.* Legal nonconforming lots may be altered or changed, provided such change does not increase the degree of nonconformity.

2. *Consolidation.* Where two or more contiguous legal nonconforming lots of record are under common ownership and will result in legal lots in conformance with bulk requirements and critical area regulations, the owner shall consolidate the subject lots into one lot. An approved and recorded boundary line adjustment shall be required prior to issuance of any development permits.

3. *Development.* To be deemed buildable, a legal nonconforming lot shall meet all of the following requirements:

- a. The lot must exceed a minimum gross area of three thousand square feet;
- b. The lot must have a minimum width of thirty feet;
- c. The property owner shall provide evidence to the city that establishes that the lot was:
 - i. Legally created, pursuant to MMC 22.40.040;
 - ii. Intended to be a building site at the time of its creation; and
 - iii. Is not is not subject to consolidation pursuant to subsection (A)(2) of this section.

4. *Exemptions.* A lot, tract, or parcel established in conformance with the requirements of RCW58.17.040 shall be exempt from the provisions of this chapter.

B. *Illegal Nonconforming Lots.* A lot that was not legally created in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming lot and will not be recognized for development. (Ord. 005/2019 § 10 (Exh. B))

22.40.060 Nonconforming structures.

A. *Legal Nonconforming Structures.* A legal nonconforming structure is a structure that conformed to the applicable code requirements that were in effect at the time of its construction, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Legal nonconforming structures may be altered, repaired, enlarged, added to or moved only as regulated by this section.

1. *Enlargement.* A structure that is legal nonconforming solely by reason of substandard yard, height, area or other bulk requirements, and is not occupied by a nonconforming use, may be enlarged. The enlargement shall conform to the regulations for the zoning district in which the building is located.

EXHIBIT A

2. *Interior Remodel.* An interior remodel of a legal nonconforming structure is permitted and will not result in loss of legal nonconforming status regardless of the cost or extent of the interior remodel, provided no exterior alteration or enlargement is involved.

3. *Repairs and Maintenance.* Repairs and/or maintenance necessary and incidental to meeting requirements of law regarding building safety, including but not limited to the International Building Code, International Residential Code, or International Fire Code, may be performed on a building or structure. In no event shall the repair of a building or structure result in the expansion of any existing nonconformity or the creation of any new nonconformity.

4. *Relocation.* Legal nonconforming structures that are moved to another location, either within the same zoning district or to another zoning district, must conform to all the rules and regulations of the zoning district to which it is moved.

5. *Reconstruction.* Legal nonconforming structures, when destroyed by accidental causes, may be rebuilt to the original building footprint and bulk requirements, and may be occupied by the same use after reconstruction subject to the following conditions:

- a. The extent of the previously existing nonconformance is not increased;
- b. No new nonconformities are created;
- c. A complete building permit application for repair or reconstruction is submitted to the city by the owner of the property within twelve months of the date of the occurrence of damage or destruction;
- d. The structure has not been damaged or destroyed beyond seventy-five percent of its assessed value;
- e. Legal nonconforming residential structures located in any single-family or multifamily residential zoning district may be rebuilt to their original dimensions and bulk after destruction by accidental causes. However, legal nonconforming residential structures may not be altered except as provided in this section;
- f. If a change in ownership of a structure subject to restoration under this section occurs after the date of the occurrence of damage or destruction, but prior to completion of such restoration, the legal nonconforming status of the structure shall be lost and it shall not be reconstructed except in conformity with the provisions of this chapter;
- g. For the purposes of this chapter, accidental causes include accidental fire, storm, earthquake, or any other natural disaster, or an act of vandalism, terrorism, or war. Reconstruction shall not be permitted for a structure subject to the National Flood Insurance Program (NFIP) unless it complies with all applicable NFIP requirements.

EXHIBIT A

B. *Illegal Nonconforming Structures.* A structure that was not legally constructed in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming structure and will not be allowed by the city to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances. (Ord. 005/2019 § 10 (Exh. B))

22.40.070 Nonconforming uses.

A. *Legal Nonconforming Uses.* A legal nonconforming use of land and/or structures is a use that conformed to the applicable code requirements that were in effect at the time of the establishment of the use, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Nonconforming uses are regulated subject to the requirements of this section.

1. *Expansion of Use.* A legal nonconforming use shall not be enlarged, expanded, or extended to occupy a greater area of building or land than was occupied at the effective date of adoption or amendment of that portion of this code which rendered the use nonconforming. Expansion includes increasing the size of the structure in which the use occurs or significantly enlarging the scope, volume, area, or intensity of the use.

a. Alterations to or expansion of a legal nonconforming use that are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed to legal nonconforming uses.

b. Improvements, expansions, or additions to existing single-family dwellings including accessory buildings, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

i. Does not change the existing use, as established, from the effective date of the nonconformance;

ii. Does not increase the land area devoted to the nonconforming use by more than twenty-five percent from the effective date of the nonconformity;

iii. Does not create additional dwelling units;

iv. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;

v. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and

vi. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

EXHIBIT A

c. Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and
- i.v. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

2. *Change of Use.* Unless specifically permitted by this chapter, an existing structure devoted to a legal nonconforming use shall not be structurally altered, except for those alterations necessary to change the nonconforming use of the structure to a use permitted in the zoning district in which it is located.

a. If no structural alterations are made, any legal nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use; provided, that the hearing body findings in the specific case shall find that the proposed use is more appropriate to the zoning district than the existing legal nonconforming use. In permitting such change, the hearing body may require appropriate conditions and safeguards in accord with the provisions of this title.

b. Any structure, or structure and land in combination, in or on which a legal nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.

c. *Relocation.* No legal nonconforming use shall be moved, in whole or in part, to any other portion of the structure or lot other than that portion occupied by such use at the effective date of adoption or amendment of the ordinance codified in this chapter.

d. *Restoration.* In the event that a structure containing an existing legal nonconforming use is destroyed by accidental causes, the legal nonconforming status of any use contained in the structure shall not be lost, provided a complete building application to rebuild the structure and reestablish the legal nonconforming use is submitted within twelve months of the date of the loss.

EXHIBIT A

e. *Conditional Uses.* An existing legal use does not become a conditional use because the zoning district in which it is located is changed to a zoning district that requires a conditional use permit for the specified use. The existing use may be enlarged without obtaining a conditional use permit.

f. *Exemption – Residential/Group Care Facilities.* The conversion of an existing residential structure to housing for people with functional disabilities, as defined by RCW 74.39A.009(23), shall not be deemed a change of use or an abandonment or discontinuity of the prior use of the structure, if such structure constituted a prior legal nonconforming use.

B. *Illegal Nonconforming Uses.* A use that was not legally established in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming use and will not be allowed by the city to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances. (Ord. 005/2019 § 10 (Exh. B))

22.40.080 Nonconforming sites.

A. *Legal Nonconforming Sites.* A legal nonconforming site is a developed building site that conformed to the applicable code requirements that were in effect regarding site development at the time of development, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Alterations to legal nonconforming sites shall be regulated by this section.

1. *Impervious Surface Coverage.* A structure on a site that is legally nonconforming because the maximum allowable impervious surface coverage has been exceeded may be increased in height and gross floor area up to the maximum allowed in the zoning district in which the site is located. No new impervious surfaces are permitted outside the footprint of an existing structure on a nonconforming site.

2. *Parking.* For any site deemed legal nonconforming due to insufficient off-street parking, as set forth in Chapter 22.44 MMC, Parking Standards and Design, such legal nonconforming conditions may continue as permitted by the provisions set forth in this section. However, in no case shall a site legal nonconforming to parking requirements have its existing number of off-street parking spaces reduced.

a. *Legal Nonconforming Residential Parking.* No additional parking spaces shall be required for modifications to residential structures on sites legal nonconforming to parking, provided:

- i. The primary land use located on the site is residential;
- ii. The number of dwelling units on the site is not increased; and
- iii. The number of off-street parking spaces on the site is not decreased.

EXHIBIT A

b. *Legal Nonconforming Nonresidential Parking.* For a nonresidential site deemed legal nonconforming to insufficient off-street parking, it shall be exempt from providing additional off-street parking, provided:

- i. A structure is not enlarged, extended, or structurally altered outside the existing building footprint in a manner that would require additional parking pursuant to Chapter 22.44 MMC.
- ii. The use of the structure is changed to one that does not require more parking than the previous use.
- iii. The number of off-street parking spaces on the site is not decreased.

c. *Movement of Structure.* If a structure that is nonconforming to parking requirements is moved to a new lot, off-street parking spaces shall be provided in accordance with the requirements of Chapter 22.44 MMC.

d. *Reduction of Required Off-Street Parking for Nonconforming Sites.* The zoning administrator may approve a reduction of up to twenty percent of the required off-street parking spaces, per Chapter 22.44 MMC, when the applicant provides one or more of the following:

- i. A parking study, written by a qualified professional, demonstrating that the parking need can be met by the proposed reduction.
- ii. The applicant enters into joint parking agreement, for use of a cooperative parking facility, in accordance with Chapter 22.44 MMC.

3. *Landscaping.* For any site deemed legal nonconforming due to insufficient landscaping, as set forth in Chapter 22.46 MMC, Landscaping Standards, such legal nonconforming conditions may continue as permitted by the provisions set forth in this section. However, in no case shall a site legal nonconforming to landscaping requirements have the total existing area of existing landscaping on site reduced.

a. *Legal Nonconforming Residential Landscaping.* No additional landscaping shall be required for modifications to residential structures on sites legal nonconforming to landscaping, provided:

- i. The primary land use located on the site is residential;
- ii. The number of dwelling units on the site is not increased; and
- iii. The total area of the landscaping on the site is not decreased.

b. *Legal Nonconforming Nonresidential Landscaping.* A nonresidential site deemed legal nonconforming to landscaping shall be exempt from providing additional landscaping, provided the following are met:

EXHIBIT A

i. A structure is not enlarged, extended, or structurally altered outside the existing building footprint in a manner that would require additional landscaping pursuant to Chapter 22.46 MMC.

ii. The use of the structure is changed to one that does not require more landscaping than the previous use.

iii. The total area of the landscaping on the site is not decreased.

c. *Landscape Plan.* When the city determines that landscaping on a nonconforming site shall be brought into compliance with code requirements, a landscape plan, which substantially conforms to the requirements of Chapter 22.46 MMC, Landscaping Standards, shall be submitted to the city for approval prior to issuance of a building or development permit.

B. *Illegal Nonconforming Sites.* A site that was not legally developed in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming site and will not be allowed by the city to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances. (Ord. 005/2019 § 10 (Exh. B))

22.40.090 Enforcement.

A. *Compliance with Current Regulations.* Pursuant to the provisions of this chapter, the following shall come into compliance with current code requirements:

1. Any illegal nonconforming structure, site, lot, or use;
2. Any legally nonconforming structure, site, lot, or use that loses its nonconforming status; and
3. Any structure or use that is deemed vacated or abandoned shall be enforced pursuant to the provisions of Chapter 1.04 MMC.

B. *Loss of Nonconforming Status.* A legally established nonconformance shall lose its legal nonconforming status when any of the following conditions are met. When legal nonconforming status is lost, the structure, site, lot, or use must be brought into conformance with all applicable code requirements.

1. *Nonconforming Structures.*

a. Should any legal nonconforming structure be destroyed by any means other than accidental causes to an extent of more than seventy-five percent of its replacement cost at time of destruction, in the judgment of the city, it shall not be reconstructed except in conformity with the provisions of this chapter. Structures destroyed by accidental causes are subject to the requirements of MMC 22.40.060(A)(5), Reconstruction.

EXHIBIT A

b. When a legal nonconforming structure, or structure and premises in combination, is vacated or abandoned for six consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the zoning district in which it is located.

2. *Nonconforming Uses.*

a. If any such legal nonconforming use is vacated or abandoned for any reason for a period of more than six consecutive months, any subsequent use shall conform to the regulations specified by this title for the zoning district in which such use is located.

b. Any structure, or structure and land in combination, in or on which a legal nonconforming use is superseded by a permitted use shall conform to the regulations specified by this title for the zoning district in which such use is located.

3. *Nonconforming Sites.*

a. *Maximum Lot Coverage.* Sites legally nonconforming to lot coverage standards shall conform to current regulations regarding impervious surface coverage when new impervious surfaces are placed outside of the footprint of an existing structure on a legal nonconforming site.

b. *Parking Requirements.* Sites legally nonconforming to off-street parking standards shall conform to current parking regulations subject to the following:

i. *Legal Nonconforming Residential Parking.* Residential sites that are legal nonconforming due to insufficient off-street parking shall be brought into conformance with the requirements set forth in Chapter 22.44 MMC, Parking Standards and Design, under the following conditions:

(A) The primary land use located on the site is changed to a nonresidential land use; or

(B) The number of dwelling units on the site is increased.

ii. *Legal Nonconforming Nonresidential Parking.* Nonresidential sites that are legal nonconforming due to insufficient off-street parking shall be brought into conformance with the requirements set forth in Chapter 22.44 MMC when one of the following conditions is met:

(A) A structure is enlarged or extended outside the existing structure footprint in a manner that would require additional parking pursuant to Chapter 22.44 MMC; or

(B) The use of the site changes to a use that requires more parking than the previous use.

EXHIBIT A

c. *Landscaping.* Sites legally nonconforming to landscaping standards shall conform to current landscaping regulations in Chapter 22.46 MMC, subject to the following:

i. *Legal Nonconforming Residential Landscaping.* Residential sites that are legal nonconforming to landscaping requirements shall be brought into conformance with the requirements set forth in Chapter 22.46 MMC, Landscaping Standards, under the following conditions:

(A) The primary land use located on the site is changed to a nonresidential land use; or

(B) The number of dwelling units on the site is increased.

ii. *Legal Nonconforming Nonresidential Landscaping.* Nonresidential sites that are legal nonconforming due to insufficient landscaping shall be brought into conformance with the requirements set forth in Chapter 22.46 MMC, Landscaping Standards, when one of the following conditions is met:

(A) A structure is enlarged or extended outside the existing structure footprint in a manner that would require additional landscaping pursuant to Chapter 22.46 MMC; or

(B) The use of the site changes to a use that requires more landscaping than the previous use.

C. *Illegal Nonconformances.* Any use, structure, lot, or site not established in compliance with applicable development regulations in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the applicable provisions of Chapter 1.04 MMC, Code Enforcement. (Ord. 005/2019 § 10 (Exh. B))



Attachment 1

CITY OF MONROE FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. GENERAL APPLICATION INFORMATION

File Number(s):	CA2021-01 (associated with SEPA2021-03)
Project Summary:	The proposal is non-project action to amend Monroe Municipal Code (MMC) 22.40, Nonconforming Use and Reuse Standards, to allow for expansions of legal nonconforming uses within the Tourist Commercial Zone.
Applicant:	City of Monroe
Location:	The proposal is a non-project action that is not site-specific. The proposed code amendment does not apply to a specific property or properties, but rather to the entire area within the limits of the City of Monroe.
Public Hearing Date:	Monday, April 26 at 7:00 PM via Zoom Virtual Meeting Platform
Staff Contact:	Amy Bright, Associate Planner City of Monroe 806 West Main Street Monroe, WA 98272 (360) 863-4533 abright@monroewa.gov

B. BACKGROUND AND DESCRIPTION OF PROPOSAL

The amendments to Monroe Municipal Code (MMC) 22.40 Nonconformance and Reuse Standards, propose revisions to all for expansions of legal nonconforming uses within the Tourist Commercial zone. The Tourist Commercial zone contained existing established uses that would otherwise not be permitted to expand. Eighty percent of the current uses within the Tourist Commercial zone are nonconforming.

C. REVIEW PROCESS

1. Overview

EXHIBIT A

MMC table 22.84.060(B)(1): Project Permit Types, designates code amendments as Type IV project permits. Type IV permits require that the Planning Commission review the proposal and make a recommendation to the final decision authority, which is the City Council. The City is proposing code text amendments to Chapter 22.40 MMC, Nonconforming Use and Reuse Standards, allowing for expansions of legal nonconforming uses within the Tourist Commercial zone.

The City is proposing text amendments, therefore, a Planning Commission public hearing and recommendation to the City Council is required. The required public hearing in front of the Planning Commission is scheduled to be held April 26, 2021.

Following the close of the public hearing, the Planning Commission will forward a recommendation to the City Council. According to MMC 22.84.030(D)(2), the Planning Commission shall make a written recommendation to the City Council regarding Type IV actions at the close of their final public hearing or at their next scheduled meeting. The written recommendation to the City Council shall be one of the following:

- a. Recommendation for additional time and/or resources on the application;
- b. Recommendation of approval of the legislative action;
- c. Recommendation of approval of the legislative action with modifications; or
- d. Recommendation of denial of the legislative action.

The City Council will hold a first reading to consider the Commission's recommendation. Per MMC table 22.84.060(B)(2), Decision-Making and Appeal Authorities, the City Council is the City's final decision authority on the proposed code amendments. The decision may be appealed subject to the judicial appeal provisions in MMC 22.84.080(D), Judicial Appeals.

2. Public Notification and Comments

- a. **Department of Commerce:** The proposed amendments were transmitted to the Washington State Department of Commerce for state agency review in accordance with RCW 36.70A.106 on March 31, 2021. Expedited review (14 days rather than 60 days) was requested. On April 14, 2021, the Department of Commerce sent an email stating that expedited review of the proposed amendments had been granted. No comments were received from the Department of Commerce or other state agencies that received notification through the Department of Commerce.
- b. **Notice of Public Hearing:** Notice of Public Hearing was provided in accordance with MMC 22.84.050 by posting the notice at City Hall and the Monroe Library, and publishing the notice in the Everett Daily Herald on April 15, 2021.

3. State Environmental Policy Act (SEPA) Review

Pursuant to WAC 197-11-704, the proposal is classified as a nonproject action under the State Environmental Policy Act. Nonproject actions involve "decisions on policies, plans, or programs," which includes the adoption of zoning ordinances [WAC 197-11-704(b)(ii)]. A SEPA Determination of Non-Significance (DNS) was issued on the proposed code amendments on March 22, 2021. The public comment period for the

EXHIBIT A

DNS ended at 5:00 PM on April 6, 2021, with an appeal deadline of 5:00 PM on April 6, 2021. No comments or appeals were received on the SEPA Threshold Determination.

4. Public Hearing

The public hearing on this matter will be held in front of the Planning Commission on April 26, 2021 7:00 PM on the Zoom platform: <https://us02web.zoom.us/j/84180707197> or by Call-in Number: 253-215-8782 Meeting ID: 841 8070 7197. No written comments were received prior to the public hearing.

5. Discussion

On April 12, 2021, City Staff brought forward the amendments to Monroe Municipal Code (MMC) 22.40 Nonconformance and Reuse Standards to Planning Commission for discussion. At that meeting Commissioner Tuttle expressed concerns over the proposed amendments. She expressed her preference to, instead, changing the allowed uses within the zone to align with existing uses. City Staff explained that City Council was given options at the January 19, 2021 City Council Meeting. Those options did include an amendment to the Tourist Commercial zoning matrix, however changes to the zoning matrix would also require a Comprehensive Plan amendment. It was explained that it was the direction of City Council to amend the Nonconforming Use and Reuse standards.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to MMC 22.72.040(E), Decision Criteria, an amendment to the Unified Development Regulations shall not be granted by the decision authority unless the applicant demonstrates that the proposal meets all of the following criteria:

1. The proposed amendment to the development regulations is consistent with the policies and provisions of the Monroe comprehensive plan;
2. The amendment complies with all other applicable criteria and standards of the Monroe Municipal Code and is consistent with the purpose of this title;
3. The subject property is suitable for development in conformance with the development regulations applicable under the proposed zoning district;
4. The proposed amendment advances the public interest of the community;
5. The amendment does not adversely affect public health, safety, or welfare; and
6. The amendment is warranted because of changed circumstances, error, or a demonstrated need for additional property in the proposed zoning district, when applicable.
7. In addition to those criteria in subsections (E)(1) through (E)(6) of this section, amendments to the official zoning map (rezones) shall also meet all of the following criteria:
 - a. The amendment is consistent with the future land use map set out in the Monroe comprehensive plan;
 - b. The amendment is compatible with the uses and zoning of the adjacent properties;
 - c. The proposed reclassification does not constitute a "spot" zone;
 - d. Adequate public facilities and services are likely to be available to serve the development allowed by the proposed zone;

EXHIBIT A

- e. The potential adverse environmental impacts of the types of development allowed by the proposed zone have been identified and can be mitigated taking into account all applicable regulations, or the unmitigated impacts are acceptable; and
- f. The proposed reclassification is an extension of an existing zone, or a logical transition between zones.

The following **Findings of Fact** have been made about the proposed code amendments, and the resultant **Conclusions of Law** were established from the Findings of Fact:

1. The proposed amendment to the development regulations is consistent with the policies and provisions of the Monroe Comprehensive Plan.

- a. Finding of Fact: The adopted 2015-2035 Monroe Comprehensive Plan contains

Policy/Action Item Number	Policy/Action Item Text
P.061:	Actively support the creation and ongoing success of business improvement organizations dedicated to downtown and other commercial areas.
P.068 and P.098:	Ensure that the amount of land zoned for business and industrial use is adequate to meet policy objectives and employment forecasts.
P.072:	Provide a supportive business environment in Monroe.
P.108:	While First Air Field remains an airport, encourage economic development opportunities and aviation related uses adjacent to airports and promote the efficient mobility of goods and services region-wide consistent with the economic development chapter and the regional transportation strategy.
A.012	Support the creation of business improvement areas to aid in promotion, maintenance, longterm planning, safety and ongoing success of City of Monroe businesses.

applicable goals and policies, as shown below.

- b. Conclusions of Law: The proposed code amendment is consistent with applicable elements, policies, and goals of the Comprehensive Plan.

2. The amendment complies with all other applicable criteria and standards of the Monroe Municipal Code and is consistent with the purpose of this title.

- a. Findings of Fact: The proposed code amendments would allow the expansion of existing nonconforming uses within the Tourist Commercial zone. At present, eighty percent of established uses within the TC zone are nonconforming due to changes to the Monroe Municipal Code during the Unified Development Regulations update. The proposed amendments would allow for the existing,

EXHIBIT A

established uses to remain and to grow.

- b. Conclusions of Law: Staff concludes the proposed amendment complies with all other applicable criteria and standards of the Monroe Municipal Code and is consistent with the purpose of this title.
- 3. The subject property is suitable for development in conformance with the development regulations applicable under the proposed zoning district.**
 - a. Findings of Fact: The proposal is not site specific. This criterion does not apply.
 - b. Conclusions of Law: The proposal is not site specific. This criterion does not apply.
 - 4. The proposed amendment advances the public interest of the community.**
 - a. Findings of Fact: The proposed amendments would advance the public interest of the community by allowing established Monroe businesses to grow and encourage businesses to remain in the city of Monroe, thus providing revenue, services and employment directly to the community.
 - b. Conclusions of Law: Staff concludes that the amendment advances the public interest of the community.
 - 5. The amendment does not adversely affect public health, safety, or welfare.**
 - a. Findings of Fact: The proposed amendments, which were initiated by the City, implement the City's policies concerning economic development. The 2015-2035 Comprehensive Plan goals are to provide a supportive business environment in Monroe and to encourage economic development opportunities adjacent to the airport.
 - b. Conclusions of Law: Staff concludes the amendment does not adversely affect public health, safety, or welfare.
 - 6. The amendment is warranted because of changed circumstances, error, or a demonstrated need for additional property in the proposed zoning district, when applicable.**
 - a. Findings of Fact: Zoning amendments were made to the Unified Development Regulations in 2018 which changed allowed uses within the Tourist Commercial zone. At present, about eighty percent of the uses within the Tourist Commercial zone are nonconforming uses.
 - b. Conclusions of Law: Staff concludes the amendment is warranted because of changed circumstances, error, or a demonstrated need for additional property in the proposed zoning district, when applicable.
 - 7. In addition to those criteria in MMC 22.72.040(E)(1-6), amendments to the official zoning map (rezones) shall also meet all of the following criteria:**
 - i. The amendment is consistent with the future land use map set out in the Monroe comprehensive plan;

EXHIBIT A

- ii. The amendment is compatible with the uses and zoning of the adjacent properties;
 - iii. The proposed reclassification does not constitute a “spot” zone;
 - iv. Adequate public facilities and services are likely to be available to serve the development allowed by the proposed zone;
 - v. The potential adverse environmental impacts of the types of development allowed by the proposed zone have been identified and can be mitigated taking into account all applicable regulations, or the unmitigated impacts are acceptable; and
 - vi. The proposed reclassification is an extension of an existing zone, or a logical transition between zones.
- a. Findings of Fact: The proposal does not include an amendment to the official zoning map. This criterion does not apply.
 - b. Conclusions of Law: The proposal does not include an amendment to the official zoning map. This criterion does not apply.

E. STAFF RECOMMENDATION

Based on the analysis and findings included herein, staff recommends to the Planning Commission the following:

Move that the Planning Commission **ADOPT** the Findings of Fact and Conclusions of Law contained in Attachment 1 to the Planning Commission agenda bill, **AUTHORIZE** the Planning Commission Chair to sign the Findings on behalf of the Commission, and recommend that the Monroe City Council **APPROVE** the proposed amendments to Monroe Municipal Code 22.40.

**CITY OF MONROE
ORDINANCE NO. 004/2021**

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING MONROE MUNICIPAL CODE SECTION 22.40, NONCONFORMING USE AND REUSE STANDARDS; ALLOWING FOR EXPANSIONS OF NONCONFORMING USES WITHIN THE TOURIST COMMERCIAL ZONING DISTRICT; SETTING FORTH SUPPORTIVE FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City adopted amendments in 2019 repealing MMC Titles 17, 18, 19, 20 and 21 and replacing with Unified Development Regulations, Title 22 MMC, effectively creating a new zone, Tourist Commercial; and

WHEREAS, at present, eighty percent of the current uses within the Tourist Commercial zone are nonconforming; and

WHEREAS, established businesses within the Tourist Commercial zone are unable to expand their businesses; and

WHEREAS, the City of Monroe is proposing text amendments to Monroe Municipal Code (MMC) section 22.40, Nonconforming Use and Reuse Standards, to allow expansions of legally established nonconforming uses within the Tourist Commercial zone; and

WHEREAS, an evaluation of the environmental impacts of the amendments to MMC Section 22.40, resulted in the issuance of a Determination of Non-Significance (DNS) on March 22, 2021, with no appeals filed; and

WHEREAS, pursuant to RCW 36.70A.106, the City provided the Washington State Department of Commerce with notice of intent to adopt the amendments to its development regulations and was granted a 14-day expedited review; and

WHEREAS, on April 12, 2021, the Monroe Planning Commission held a study session to discuss the proposed amendments to MMC Section 22.40; and

WHEREAS, the City issued a Notice of Public Hearing on April 15, 2021, which was at least ten calendar days prior to the date of the public hearing, pursuant to MMC 21.40.020(A)(1); and

WHEREAS, MMC subsection 22.84.060(B)(2) necessitates that amendments to the Unified Development Regulations (MMC Title 22) requires Planning Commission review and recommendation; and

EXHIBIT A

WHEREAS, the Monroe Planning Commission held a duly noticed public hearing on April 26, 2021, to accept public testimony on the proposed code amendments; and

WHEREAS, at the conclusion of the April 26, 2021, public hearing, the Planning Commission voted unanimously to recommend approval of the proposed amendments; and

WHEREAS, the Monroe City Council conducted a first reading of the proposed ordinance on May 11, 2021, and second reading on _____, 2021, to discuss the proposed amendments to the Monroe Municipal Code at duly noticed public meetings.

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

Section 1. Findings. The above recitals and the content of Agenda Bill Nos. _____ and _____ are hereby adopted as legislative findings in support of the amendments set forth in this ordinance. The City Council further adopts by reference the findings contained in the Planning Commission's April 26, 2021, recommendation and finding of facts.

Section 2. Amendment of MMC Section 22.40. Monroe Municipal Code section 22.40, Nonconforming Use and Reuse Standards, is hereby amended to add the following conforming use:

22.40.070 Nonconforming Uses.

A.1.c Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and
- v. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

Section 3. Copy to Commerce. Pursuant to RCW 36.70A.106, a true and correct copy of this ordinance shall be transmitted to the Department of Commerce, Growth Management Services Division, within ten days after adoption.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent

EXHIBIT A

jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

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

ADOPTED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this _____ day of _____, 2021.

First Reading: May 11, 2021
Adoption:
Published:
Effective:

CITY OF MONROE, WASHINGTON:

(SEAL)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:

Rebecca Hasart, MMC, Interim City Clerk

J. Zachary Lell, City Attorney



AGENDA BILL

Meeting Date: May 25, 2021

Staff Contact: Amy Bright, Associate Planner

Department: Community Development

SUBJECT: Ordinance No. 004/2021, Adopting Zoning Amendments to Chapter 22.40 MMC, Nonconformance and Reuse Standards; Final Reading

PREVIOUS DISCUSSION:

CC: 1/19/2021

PC Introduction: 4/12/2021

PC Public Hearing: 4/26/2021

CC First Reading: 5/11/2021

PUBLIC HEARING(S):

PC: 4/26/2021

REQUESTED ACTION:

Move to adopt Ordinance No. 004/2020, amending Chapter 22.40 MMC, Nonconformance and Reuse Standards; allowing for expansions of legal nonconforming uses within the Tourist Commercial zone; setting forth legislative findings; providing for severability; and establishing an effective date.

NOTE: first reading of Ordinance No. 004/2021 was accepted on May 11, 2021; and there have been a few minor changes to the draft ordinance since first reading, none of which involve the content of the proposed code amendment.

POLICY CONSIDERATIONS:

Pursuant to MMC Table 22.84.060(B)(2): Decision Making and Appeal Authorities, the City Council is the final decision authority for amendments to the Unified Development Regulations. The City Council shall approve, approve with conditions, remand to the recommending authority for further proceedings, or deny the amendment.

DESCRIPTION/BACKGROUND:

The purpose of this code amendment is to allow for expansions of legal nonconforming uses within the Tourist Commercial Zone. The 2018 adoption of the Unified Development Regulations changed the allowed uses within the Tourist Commercial zone. At present, eighty percent of the current uses within the Tourist Commercial zone are nonconforming.

EXHIBIT B

The amendments to Monroe Municipal Code (MMC) 22.40 Nonconformance and Reuse Standards, propose revisions to all for expansions of legal nonconforming uses within the Tourist Commercial zone. The Tourist Commercial zone contains existing established uses that would otherwise not be permitted to expand.

Review and Public Notice

Discussions regarding amending 22.40 MMC, Nonconforming Use and Reuse Standards text amendments were conducted at the April 12, 2021 and April 26, 2021 Planning Commission meetings. During these meetings, the Planning Commission recommended the proposed text amendments as written in Attachment 2.

The proposed amendments were transmitted to the Washington State Department of Commerce for state agency review, in accordance with RCW 36.70A.106, on March 31, 2021. Expedited review (14 days rather than 60 days) was requested.

Notice of Public Hearing was provided in accordance with MMC 22.84.050(C) by posting the notice at City Hall and the Monroe Library, and publishing the notice in the Everett Daily Herald on April 15, 2021. Expedited review, with no comments, was granted on April 14, 2021.

A NOA/SEPA Determination of Non-Significance (DNS) was issued on the proposed code amendments on March 22, 2021. The public comment and appeal periods for the NOA/DNS ended at 5:00 PM on April 6, 2021. No comments or appeals were received.

The public hearing on this matter was held in front of the Planning Commission on April 26, 2021. No written comments were received prior to the public hearing.

The Planning Commission recommended that the Monroe City Council **approve** the proposed amendments to Monroe Municipal Code Chapter 22.40 adding a new subsection (c):

c. Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;*
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;*
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;*
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and*
- iv. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.*

The proposed code amendments would allow the expansion of existing nonconforming uses within the Tourist Commercial zone. At present, eighty percent of established uses within the

EXHIBIT B

TC zone are nonconforming due to changes to the Monroe Municipal Code during the Unified Development Regulations update.

The proposed amendments would:

- Actively support the creation and ongoing success of business improvement organizations dedicated to downtown and other commercial areas.
- Ensure that the amount of land zoned for business and industrial use is adequate to meet policy objectives and employment forecasts.
- Provide a supportive business environment in Monroe.
- While First Air Field remains an airport, encourage economic development opportunities and aviation related uses adjacent to airports and promote the efficient mobility of goods and services region-wide consistent with the economic development chapter and the regional transportation strategy.
- Support the creation of business improvement areas to aid in promotion, maintenance, long-term planning, safety and ongoing success of City of Monroe businesses.
- Allow established uses to remain and to grow.

FISCAL IMPACTS:

None

TIME CONSTRAINTS:

None

ALTERNATIVES TO REQUESTED ACTION:

1. Discuss the proposed code amendments and identify areas on concern.
2. Reman the proposed amendments back to the Planning Commission for additional deliberation.

ATTACHMENTS:

[Proposed Text Amendments S&D](#)

[CA2021-01-Nonconformance and Reuse Amendment-Findings of Fact 4-26-2021](#)

[Ordinanace 004-2021 Nonconforming Use and Reuse Standards Amendment](#)

Chapter 22.40 NONCONFORMANCE AND REUSE STANDARDS

Sections:

- **22.40.010 Purpose.**
- **22.40.020 Applicability.**
- **22.40.030 General provisions.**
- **22.40.040 Preexisting legal lots of record.**
- **22.40.050 Nonconforming lots.**
- **22.40.060 Nonconforming structures.**
- **22.40.070 Nonconforming uses.**
- **22.40.080 Nonconforming sites.**
- **22.40.090 Enforcement.**

22.40.010 Purpose.

The purposes of this chapter are established as follows:

- A. To establish the legal status of a nonconforming use, site, or structure by creating provisions through which a nonconforming use, site, or structure may be maintained, altered, reconstructed, expanded, or terminated.
- B. To establish the legal status of nonconforming lots and create provisions through which a nonconforming lot may be maintained or developed.
- C. To encourage the adaptive reuse of existing structures.
- D. To identify standards for determining which nonconforming structures, sites, lots, and uses must be brought into conformance with the provisions of all applicable code requirements. (Ord. 005/2019 § 10 (Exh. B))

22.40.020 Applicability.

All nonconformances shall be subject to the provisions of this chapter. The provisions of this chapter do not supersede or relieve a property owner from compliance with the following:

- A. The requirements of the International Building and Fire Codes; and
- B. The provisions of this code beyond the specific nonconformance(s) addressed by this chapter. (Ord. 005/2019 § 10 (Exh. B))

22.40.030 General provisions.

A. Any legally established nonconformance may be maintained in legal nonconforming status as long as no new nonconformances are created, there is no expansion of any existing nonconformity, and legal nonconforming status is not lost under any of the circumstances set forth in this section. If legal nonconforming status is lost, the structure, site, lot, or use must be brought into conformance with all applicable code requirements.

EXHIBIT B

- B. Development or modification of a legal nonconforming structure, site, lot, or use shall not increase or expand the degree of nonconformity.
- C. A tract created to protect critical areas, provide open space, or as a public or private access tract shall not be considered legally buildable.
- D. No nonconforming structure, site, lot, or use shall be created as a result of the division of land or any modification of a lot line through any subdivision or lot line revision.
- E. Change of tenancy, ownership, or management shall not affect legal nonconforming status.
- F. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any legal nonconforming building or part thereof declared to be unsafe by order of the city to protect the public safety.
- G. This chapter shall govern nonconforming structures, sites, lots, and uses within any critical area, unless Chapter 22.80 MMC, Critical Areas, establishes more specific standards.
- H. Legal nonconforming signs are regulated pursuant to Chapter 22.50 MMC, Signs. (Ord. 005/2019 § 10 (Exh. B))

22.40.040 Preexisting legal lots of record.

A lot, tract, or parcel is considered a legal lot of record if it was subdivided in compliance with applicable laws regarding platting at the time of its creation.

A. A lot, tract, or parcel shall be deemed a legal lot of record if it meets one of the following criteria:

1. Any lot platted or legally created under a Monroe subdivision ordinance on or after December 31, 1968; or
2. Any lot that was a legal lot of record under the regulations and standards of Snohomish County prior to annexation into the city of Monroe; or
3. Any parcel divided by metes and bounds, or fractional section description, or platted and recorded with the Snohomish County auditor prior to December 31, 1968; or
4. Any parcel defined by metes and bounds, or fractional section description, and conveyed by notarized deed prior to December 31, 1968.

B. Pursuant to RCW 58.17.210, the city shall not issue any building or development permits for lots, tracts, or parcels divided in violation of state or local land use regulations. The applicant shall bear the burden of proving that a lot, tract, or parcel is legal. (Ord. 005/2019 § 10 (Exh. B))

22.40.050 Nonconforming lots.

EXHIBIT B

A. *Legal Nonconforming Lots.* Legal lots of record that do not meet the requirements set forth in this title are considered legal nonconforming lots.

1. *Alterations.* Legal nonconforming lots may be altered or changed, provided such change does not increase the degree of nonconformity.

2. *Consolidation.* Where two or more contiguous legal nonconforming lots of record are under common ownership and will result in legal lots in conformance with bulk requirements and critical area regulations, the owner shall consolidate the subject lots into one lot. An approved and recorded boundary line adjustment shall be required prior to issuance of any development permits.

3. *Development.* To be deemed buildable, a legal nonconforming lot shall meet all of the following requirements:

- a. The lot must exceed a minimum gross area of three thousand square feet;
- b. The lot must have a minimum width of thirty feet;
- c. The property owner shall provide evidence to the city that establishes that the lot was:
 - i. Legally created, pursuant to MMC 22.40.040;
 - ii. Intended to be a building site at the time of its creation; and
 - iii. Is not is not subject to consolidation pursuant to subsection (A)(2) of this section.

4. *Exemptions.* A lot, tract, or parcel established in conformance with the requirements of RCW58.17.040 shall be exempt from the provisions of this chapter.

B. *Illegal Nonconforming Lots.* A lot that was not legally created in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming lot and will not be recognized for development. (Ord. 005/2019 § 10 (Exh. B))

22.40.060 Nonconforming structures.

A. *Legal Nonconforming Structures.* A legal nonconforming structure is a structure that conformed to the applicable code requirements that were in effect at the time of its construction, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Legal nonconforming structures may be altered, repaired, enlarged, added to or moved only as regulated by this section.

1. *Enlargement.* A structure that is legal nonconforming solely by reason of substandard yard, height, area or other bulk requirements, and is not occupied by a nonconforming use, may be enlarged. The enlargement shall conform to the regulations for the zoning district in which the building is located.

EXHIBIT B

2. *Interior Remodel.* An interior remodel of a legal nonconforming structure is permitted and will not result in loss of legal nonconforming status regardless of the cost or extent of the interior remodel, provided no exterior alteration or enlargement is involved.

3. *Repairs and Maintenance.* Repairs and/or maintenance necessary and incidental to meeting requirements of law regarding building safety, including but not limited to the International Building Code, International Residential Code, or International Fire Code, may be performed on a building or structure. In no event shall the repair of a building or structure result in the expansion of any existing nonconformity or the creation of any new nonconformity.

4. *Relocation.* Legal nonconforming structures that are moved to another location, either within the same zoning district or to another zoning district, must conform to all the rules and regulations of the zoning district to which it is moved.

5. *Reconstruction.* Legal nonconforming structures, when destroyed by accidental causes, may be rebuilt to the original building footprint and bulk requirements, and may be occupied by the same use after reconstruction subject to the following conditions:

- a. The extent of the previously existing nonconformance is not increased;
- b. No new nonconformities are created;
- c. A complete building permit application for repair or reconstruction is submitted to the city by the owner of the property within twelve months of the date of the occurrence of damage or destruction;
- d. The structure has not been damaged or destroyed beyond seventy-five percent of its assessed value;
- e. Legal nonconforming residential structures located in any single-family or multifamily residential zoning district may be rebuilt to their original dimensions and bulk after destruction by accidental causes. However, legal nonconforming residential structures may not be altered except as provided in this section;
- f. If a change in ownership of a structure subject to restoration under this section occurs after the date of the occurrence of damage or destruction, but prior to completion of such restoration, the legal nonconforming status of the structure shall be lost and it shall not be reconstructed except in conformity with the provisions of this chapter;
- g. For the purposes of this chapter, accidental causes include accidental fire, storm, earthquake, or any other natural disaster, or an act of vandalism, terrorism, or war. Reconstruction shall not be permitted for a structure subject to the National Flood Insurance Program (NFIP) unless it complies with all applicable NFIP requirements.

EXHIBIT B

B. *Illegal Nonconforming Structures.* A structure that was not legally constructed in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming structure and will not be allowed by the city to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances. (Ord. 005/2019 § 10 (Exh. B))

22.40.070 Nonconforming uses.

A. *Legal Nonconforming Uses.* A legal nonconforming use of land and/or structures is a use that conformed to the applicable code requirements that were in effect at the time of the establishment of the use, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Nonconforming uses are regulated subject to the requirements of this section.

1. *Expansion of Use.* A legal nonconforming use shall not be enlarged, expanded, or extended to occupy a greater area of building or land than was occupied at the effective date of adoption or amendment of that portion of this code which rendered the use nonconforming. Expansion includes increasing the size of the structure in which the use occurs or significantly enlarging the scope, volume, area, or intensity of the use.

a. Alterations to or expansion of a legal nonconforming use that are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed to legal nonconforming uses.

b. Improvements, expansions, or additions to existing single-family dwellings including accessory buildings, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

i. Does not change the existing use, as established, from the effective date of the nonconformance;

ii. Does not increase the land area devoted to the nonconforming use by more than twenty-five percent from the effective date of the nonconformity;

iii. Does not create additional dwelling units;

iv. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;

v. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and

vi. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

EXHIBIT B

c. Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and
- i.v. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

2. *Change of Use.* Unless specifically permitted by this chapter, an existing structure devoted to a legal nonconforming use shall not be structurally altered, except for those alterations necessary to change the nonconforming use of the structure to a use permitted in the zoning district in which it is located.

a. If no structural alterations are made, any legal nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use; provided, that the hearing body findings in the specific case shall find that the proposed use is more appropriate to the zoning district than the existing legal nonconforming use. In permitting such change, the hearing body may require appropriate conditions and safeguards in accord with the provisions of this title.

b. Any structure, or structure and land in combination, in or on which a legal nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed.

c. *Relocation.* No legal nonconforming use shall be moved, in whole or in part, to any other portion of the structure or lot other than that portion occupied by such use at the effective date of adoption or amendment of the ordinance codified in this chapter.

d. *Restoration.* In the event that a structure containing an existing legal nonconforming use is destroyed by accidental causes, the legal nonconforming status of any use contained in the structure shall not be lost, provided a complete building application to rebuild the structure and reestablish the legal nonconforming use is submitted within twelve months of the date of the loss.

EXHIBIT B

e. *Conditional Uses.* An existing legal use does not become a conditional use because the zoning district in which it is located is changed to a zoning district that requires a conditional use permit for the specified use. The existing use may be enlarged without obtaining a conditional use permit.

f. *Exemption – Residential/Group Care Facilities.* The conversion of an existing residential structure to housing for people with functional disabilities, as defined by RCW 74.39A.009(23), shall not be deemed a change of use or an abandonment or discontinuity of the prior use of the structure, if such structure constituted a prior legal nonconforming use.

B. *Illegal Nonconforming Uses.* A use that was not legally established in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming use and will not be allowed by the city to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances. (Ord. 005/2019 § 10 (Exh. B))

22.40.080 Nonconforming sites.

A. *Legal Nonconforming Sites.* A legal nonconforming site is a developed building site that conformed to the applicable code requirements that were in effect regarding site development at the time of development, but does not conform to the current regulations of the zoning district in which it is situated due to subsequent changes in code requirements. Alterations to legal nonconforming sites shall be regulated by this section.

1. *Impervious Surface Coverage.* A structure on a site that is legally nonconforming because the maximum allowable impervious surface coverage has been exceeded may be increased in height and gross floor area up to the maximum allowed in the zoning district in which the site is located. No new impervious surfaces are permitted outside the footprint of an existing structure on a nonconforming site.

2. *Parking.* For any site deemed legal nonconforming due to insufficient off-street parking, as set forth in Chapter 22.44 MMC, Parking Standards and Design, such legal nonconforming conditions may continue as permitted by the provisions set forth in this section. However, in no case shall a site legal nonconforming to parking requirements have its existing number of off-street parking spaces reduced.

a. *Legal Nonconforming Residential Parking.* No additional parking spaces shall be required for modifications to residential structures on sites legal nonconforming to parking, provided:

- i. The primary land use located on the site is residential;
- ii. The number of dwelling units on the site is not increased; and
- iii. The number of off-street parking spaces on the site is not decreased.

EXHIBIT B

b. *Legal Nonconforming Nonresidential Parking.* For a nonresidential site deemed legal nonconforming to insufficient off-street parking, it shall be exempt from providing additional off-street parking, provided:

- i. A structure is not enlarged, extended, or structurally altered outside the existing building footprint in a manner that would require additional parking pursuant to Chapter 22.44 MMC.
- ii. The use of the structure is changed to one that does not require more parking than the previous use.
- iii. The number of off-street parking spaces on the site is not decreased.

c. *Movement of Structure.* If a structure that is nonconforming to parking requirements is moved to a new lot, off-street parking spaces shall be provided in accordance with the requirements of Chapter 22.44 MMC.

d. *Reduction of Required Off-Street Parking for Nonconforming Sites.* The zoning administrator may approve a reduction of up to twenty percent of the required off-street parking spaces, per Chapter 22.44 MMC, when the applicant provides one or more of the following:

- i. A parking study, written by a qualified professional, demonstrating that the parking need can be met by the proposed reduction.
- ii. The applicant enters into joint parking agreement, for use of a cooperative parking facility, in accordance with Chapter 22.44 MMC.

3. *Landscaping.* For any site deemed legal nonconforming due to insufficient landscaping, as set forth in Chapter 22.46 MMC, Landscaping Standards, such legal nonconforming conditions may continue as permitted by the provisions set forth in this section. However, in no case shall a site legal nonconforming to landscaping requirements have the total existing area of existing landscaping on site reduced.

a. *Legal Nonconforming Residential Landscaping.* No additional landscaping shall be required for modifications to residential structures on sites legal nonconforming to landscaping, provided:

- i. The primary land use located on the site is residential;
- ii. The number of dwelling units on the site is not increased; and
- iii. The total area of the landscaping on the site is not decreased.

b. *Legal Nonconforming Nonresidential Landscaping.* A nonresidential site deemed legal nonconforming to landscaping shall be exempt from providing additional landscaping, provided the following are met:

EXHIBIT B

i. A structure is not enlarged, extended, or structurally altered outside the existing building footprint in a manner that would require additional landscaping pursuant to Chapter 22.46 MMC.

ii. The use of the structure is changed to one that does not require more landscaping than the previous use.

iii. The total area of the landscaping on the site is not decreased.

c. *Landscape Plan.* When the city determines that landscaping on a nonconforming site shall be brought into compliance with code requirements, a landscape plan, which substantially conforms to the requirements of Chapter 22.46 MMC, Landscaping Standards, shall be submitted to the city for approval prior to issuance of a building or development permit.

B. *Illegal Nonconforming Sites.* A site that was not legally developed in accordance with the laws of the local governmental entity in which it was located at the date of its creation is an illegal nonconforming site and will not be allowed by the city to remain pursuant to MMC 22.40.090(C), Illegal Nonconformances. (Ord. 005/2019 § 10 (Exh. B))

22.40.090 Enforcement.

A. *Compliance with Current Regulations.* Pursuant to the provisions of this chapter, the following shall come into compliance with current code requirements:

1. Any illegal nonconforming structure, site, lot, or use;
2. Any legally nonconforming structure, site, lot, or use that loses its nonconforming status; and
3. Any structure or use that is deemed vacated or abandoned shall be enforced pursuant to the provisions of Chapter 1.04 MMC.

B. *Loss of Nonconforming Status.* A legally established nonconformance shall lose its legal nonconforming status when any of the following conditions are met. When legal nonconforming status is lost, the structure, site, lot, or use must be brought into conformance with all applicable code requirements.

1. *Nonconforming Structures.*

a. Should any legal nonconforming structure be destroyed by any means other than accidental causes to an extent of more than seventy-five percent of its replacement cost at time of destruction, in the judgment of the city, it shall not be reconstructed except in conformity with the provisions of this chapter. Structures destroyed by accidental causes are subject to the requirements of MMC 22.40.060(A)(5), Reconstruction.

EXHIBIT B

b. When a legal nonconforming structure, or structure and premises in combination, is vacated or abandoned for six consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the zoning district in which it is located.

2. *Nonconforming Uses.*

a. If any such legal nonconforming use is vacated or abandoned for any reason for a period of more than six consecutive months, any subsequent use shall conform to the regulations specified by this title for the zoning district in which such use is located.

b. Any structure, or structure and land in combination, in or on which a legal nonconforming use is superseded by a permitted use shall conform to the regulations specified by this title for the zoning district in which such use is located.

3. *Nonconforming Sites.*

a. *Maximum Lot Coverage.* Sites legally nonconforming to lot coverage standards shall conform to current regulations regarding impervious surface coverage when new impervious surfaces are placed outside of the footprint of an existing structure on a legal nonconforming site.

b. *Parking Requirements.* Sites legally nonconforming to off-street parking standards shall conform to current parking regulations subject to the following:

i. *Legal Nonconforming Residential Parking.* Residential sites that are legal nonconforming due to insufficient off-street parking shall be brought into conformance with the requirements set forth in Chapter 22.44 MMC, Parking Standards and Design, under the following conditions:

(A) The primary land use located on the site is changed to a nonresidential land use; or

(B) The number of dwelling units on the site is increased.

ii. *Legal Nonconforming Nonresidential Parking.* Nonresidential sites that are legal nonconforming due to insufficient off-street parking shall be brought into conformance with the requirements set forth in Chapter 22.44 MMC when one of the following conditions is met:

(A) A structure is enlarged or extended outside the existing structure footprint in a manner that would require additional parking pursuant to Chapter 22.44 MMC; or

(B) The use of the site changes to a use that requires more parking than the previous use.

EXHIBIT B

c. *Landscaping.* Sites legally nonconforming to landscaping standards shall conform to current landscaping regulations in Chapter 22.46 MMC, subject to the following:

i. *Legal Nonconforming Residential Landscaping.* Residential sites that are legal nonconforming to landscaping requirements shall be brought into conformance with the requirements set forth in Chapter 22.46 MMC, Landscaping Standards, under the following conditions:

(A) The primary land use located on the site is changed to a nonresidential land use; or

(B) The number of dwelling units on the site is increased.

ii. *Legal Nonconforming Nonresidential Landscaping.* Nonresidential sites that are legal nonconforming due to insufficient landscaping shall be brought into conformance with the requirements set forth in Chapter 22.46 MMC, Landscaping Standards, when one of the following conditions is met:

(A) A structure is enlarged or extended outside the existing structure footprint in a manner that would require additional landscaping pursuant to Chapter 22.46 MMC; or

(B) The use of the site changes to a use that requires more landscaping than the previous use.

C. *Illegal Nonconformances.* Any use, structure, lot, or site not established in compliance with applicable development regulations in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal pursuant to the applicable provisions of Chapter 1.04 MMC, Code Enforcement. (Ord. 005/2019 § 10 (Exh. B))



Attachment 1

CITY OF MONROE FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. GENERAL APPLICATION INFORMATION

File Number(s):	CA2021-01 (associated with SEPA2021-03)
Project Summary:	The proposal is non-project action to amend Monroe Municipal Code (MMC) 22.40, Nonconforming Use and Reuse Standards, to allow for expansions of legal nonconforming uses within the Tourist Commercial Zone.
Applicant:	City of Monroe
Location:	The proposal is a non-project action that is not site-specific. The proposed code amendment does not apply to a specific property or properties, but rather to the entire area within the limits of the City of Monroe.
Public Hearing Date:	Monday, April 26 at 7:00 PM via Zoom Virtual Meeting Platform
Staff Contact:	Amy Bright, Associate Planner City of Monroe 806 West Main Street Monroe, WA 98272 (360) 863-4533 abright@monroewa.gov

B. BACKGROUND AND DESCRIPTION OF PROPOSAL

The amendments to Monroe Municipal Code (MMC) 22.40 Nonconformance and Reuse Standards, propose revisions to all for expansions of legal nonconforming uses within the Tourist Commercial zone. The Tourist Commercial zone contained existing established uses that would otherwise not be permitted to expand. Eighty percent of the current uses within the Tourist Commercial zone are nonconforming.

C. REVIEW PROCESS

1. Overview

EXHIBIT B

MMC table 22.84.060(B)(1): Project Permit Types, designates code amendments as Type IV project permits. Type IV permits require that the Planning Commission review the proposal and make a recommendation to the final decision authority, which is the City Council. The City is proposing code text amendments to Chapter 22.40 MMC, Nonconforming Use and Reuse Standards, allowing for expansions of legal nonconforming uses within the Tourist Commercial zone.

The City is proposing text amendments, therefore, a Planning Commission public hearing and recommendation to the City Council is required. The required public hearing in front of the Planning Commission is scheduled to be held April 26, 2021.

Following the close of the public hearing, the Planning Commission will forward a recommendation to the City Council. According to MMC 22.84.030(D)(2), the Planning Commission shall make a written recommendation to the City Council regarding Type IV actions at the close of their final public hearing or at their next scheduled meeting. The written recommendation to the City Council shall be one of the following:

- a. Recommendation for additional time and/or resources on the application;
- b. Recommendation of approval of the legislative action;
- c. Recommendation of approval of the legislative action with modifications; or
- d. Recommendation of denial of the legislative action.

The City Council will hold a first reading to consider the Commission's recommendation. Per MMC table 22.84.060(B)(2), Decision-Making and Appeal Authorities, the City Council is the City's final decision authority on the proposed code amendments. The decision may be appealed subject to the judicial appeal provisions in MMC 22.84.080(D), Judicial Appeals.

2. Public Notification and Comments

- a. **Department of Commerce:** The proposed amendments were transmitted to the Washington State Department of Commerce for state agency review in accordance with RCW 36.70A.106 on March 31, 2021. Expedited review (14 days rather than 60 days) was requested. On April 14, 2021, the Department of Commerce sent an email stating that expedited review of the proposed amendments had been granted. No comments were received from the Department of Commerce or other state agencies that received notification through the Department of Commerce.
- b. **Notice of Public Hearing:** Notice of Public Hearing was provided in accordance with MMC 22.84.050 by posting the notice at City Hall and the Monroe Library, and publishing the notice in the Everett Daily Herald on April 15, 2021.

3. State Environmental Policy Act (SEPA) Review

Pursuant to WAC 197-11-704, the proposal is classified as a nonproject action under the State Environmental Policy Act. Nonproject actions involve "decisions on policies, plans, or programs," which includes the adoption of zoning ordinances [WAC 197-11-704(b)(ii)]. A SEPA Determination of Non-Significance (DNS) was issued on the proposed code amendments on March 22, 2021. The public comment period for the

EXHIBIT B

DNS ended at 5:00 PM on April 6, 2021, with an appeal deadline of 5:00 PM on April 6, 2021. No comments or appeals were received on the SEPA Threshold Determination.

4. Public Hearing

The public hearing on this matter will be held in front of the Planning Commission on April 26, 2021 7:00 PM on the Zoom platform: <https://us02web.zoom.us/j/84180707197> or by Call-in Number: 253-215-8782 Meeting ID: 841 8070 7197. No written comments were received prior to the public hearing.

5. Discussion

On April 12, 2021, City Staff brought forward the amendments to Monroe Municipal Code (MMC) 22.40 Nonconformance and Reuse Standards to Planning Commission for discussion. At that meeting Commissioner Tuttle expressed concerns over the proposed amendments. She expressed her preference to, instead, changing the allowed uses within the zone to align with existing uses. City Staff explained that City Council was given options at the January 19, 2021 City Council Meeting. Those options did include an amendment to the Tourist Commercial zoning matrix, however changes to the zoning matrix would also require a Comprehensive Plan amendment. It was explained that it was the direction of City Council to amend the Nonconforming Use and Reuse standards.

D. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to MMC 22.72.040(E), Decision Criteria, an amendment to the Unified Development Regulations shall not be granted by the decision authority unless the applicant demonstrates that the proposal meets all of the following criteria:

1. The proposed amendment to the development regulations is consistent with the policies and provisions of the Monroe comprehensive plan;
2. The amendment complies with all other applicable criteria and standards of the Monroe Municipal Code and is consistent with the purpose of this title;
3. The subject property is suitable for development in conformance with the development regulations applicable under the proposed zoning district;
4. The proposed amendment advances the public interest of the community;
5. The amendment does not adversely affect public health, safety, or welfare; and
6. The amendment is warranted because of changed circumstances, error, or a demonstrated need for additional property in the proposed zoning district, when applicable.
7. In addition to those criteria in subsections (E)(1) through (E)(6) of this section, amendments to the official zoning map (rezones) shall also meet all of the following criteria:
 - a. The amendment is consistent with the future land use map set out in the Monroe comprehensive plan;
 - b. The amendment is compatible with the uses and zoning of the adjacent properties;
 - c. The proposed reclassification does not constitute a "spot" zone;
 - d. Adequate public facilities and services are likely to be available to serve the development allowed by the proposed zone;

EXHIBIT B

- e. The potential adverse environmental impacts of the types of development allowed by the proposed zone have been identified and can be mitigated taking into account all applicable regulations, or the unmitigated impacts are acceptable; and
- f. The proposed reclassification is an extension of an existing zone, or a logical transition between zones.

The following **Findings of Fact** have been made about the proposed code amendments, and the resultant **Conclusions of Law** were established from the Findings of Fact:

1. The proposed amendment to the development regulations is consistent with the policies and provisions of the Monroe Comprehensive Plan.

- a. Finding of Fact: The adopted 2015-2035 Monroe Comprehensive Plan contains

Policy/Action Item Number	Policy/Action Item Text
P.061:	Actively support the creation and ongoing success of business improvement organizations dedicated to downtown and other commercial areas.
P.068 and P.098:	Ensure that the amount of land zoned for business and industrial use is adequate to meet policy objectives and employment forecasts.
P.072:	Provide a supportive business environment in Monroe.
P.108:	While First Air Field remains an airport, encourage economic development opportunities and aviation related uses adjacent to airports and promote the efficient mobility of goods and services region-wide consistent with the economic development chapter and the regional transportation strategy.
A.012	Support the creation of business improvement areas to aid in promotion, maintenance, longterm planning, safety and ongoing success of City of Monroe businesses.

applicable goals and policies, as shown below.

- b. Conclusions of Law: The proposed code amendment is consistent with applicable elements, policies, and goals of the Comprehensive Plan.

2. The amendment complies with all other applicable criteria and standards of the Monroe Municipal Code and is consistent with the purpose of this title.

- a. Findings of Fact: The proposed code amendments would allow the expansion of existing nonconforming uses within the Tourist Commercial zone. At present, eighty percent of established uses within the TC zone are nonconforming due to changes to the Monroe Municipal Code during the Unified Development Regulations update. The proposed amendments would allow for the existing,

EXHIBIT B

established uses to remain and to grow.

- b. Conclusions of Law: Staff concludes the proposed amendment complies with all other applicable criteria and standards of the Monroe Municipal Code and is consistent with the purpose of this title.
- 3. The subject property is suitable for development in conformance with the development regulations applicable under the proposed zoning district.**
 - a. Findings of Fact: The proposal is not site specific. This criterion does not apply.
 - b. Conclusions of Law: The proposal is not site specific. This criterion does not apply.
- 4. The proposed amendment advances the public interest of the community.**
 - a. Findings of Fact: The proposed amendments would advance the public interest of the community by allowing established Monroe businesses to grow and encourage businesses to remain in the city of Monroe, thus providing revenue, services and employment directly to the community.
 - b. Conclusions of Law: Staff concludes that the amendment advances the public interest of the community.
- 5. The amendment does not adversely affect public health, safety, or welfare.**
 - a. Findings of Fact: The proposed amendments, which were initiated by the City, implement the City's policies concerning economic development. The 2015-2035 Comprehensive Plan goals are to provide a supportive business environment in Monroe and to encourage economic development opportunities adjacent to the airport.
 - b. Conclusions of Law: Staff concludes the amendment does not adversely affect public health, safety, or welfare.
- 6. The amendment is warranted because of changed circumstances, error, or a demonstrated need for additional property in the proposed zoning district, when applicable.**
 - a. Findings of Fact: Zoning amendments were made to the Unified Development Regulations in 2018 which changed allowed uses within the Tourist Commercial zone. At present, about eighty percent of the uses within the Tourist Commercial zone are nonconforming uses.
 - b. Conclusions of Law: Staff concludes the amendment is warranted because of changed circumstances, error, or a demonstrated need for additional property in the proposed zoning district, when applicable.
- 7. In addition to those criteria in MMC 22.72.040(E)(1-6), amendments to the official zoning map (rezones) shall also meet all of the following criteria:**
 - i. The amendment is consistent with the future land use map set out in the Monroe comprehensive plan;

EXHIBIT B

- ii. The amendment is compatible with the uses and zoning of the adjacent properties;
 - iii. The proposed reclassification does not constitute a “spot” zone;
 - iv. Adequate public facilities and services are likely to be available to serve the development allowed by the proposed zone;
 - v. The potential adverse environmental impacts of the types of development allowed by the proposed zone have been identified and can be mitigated taking into account all applicable regulations, or the unmitigated impacts are acceptable; and
 - vi. The proposed reclassification is an extension of an existing zone, or a logical transition between zones.
- a. Findings of Fact: The proposal does not include an amendment to the official zoning map. This criterion does not apply.
 - b. Conclusions of Law: The proposal does not include an amendment to the official zoning map. This criterion does not apply.

E. STAFF RECOMMENDATION

Based on the analysis and findings included herein, staff recommends to the Planning Commission the following:

Move that the Planning Commission **ADOPT** the Findings of Fact and Conclusions of Law contained in Attachment 1 to the Planning Commission agenda bill, **AUTHORIZE** the Planning Commission Chair to sign the Findings on behalf of the Commission, and recommend that the Monroe City Council **APPROVE** the proposed amendments to Monroe Municipal Code 22.40.

EXHIBIT B

**CITY OF MONROE
ORDINANCE NO. 004/2021**

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING MONROE MUNICIPAL CODE CHAPTER 22.40, NONCONFORMING USE AND RESUE STANDARDS; ALLOWING FOR EXPANSIONS OF NONCONFORMING USES WITHIN THE TOURIST COMMERCIAL ZONING DISTRICT; SETTING FORTH SUPPORTIVE FINDINGS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City adopted amendments in 2019 repealing MMC Titles 17, 18, 19, 20 and 21 and replacing with Unified Development Regulations, Title 22 MMC, effectively creating a new zone, Tourist Commercial; and

WHEREAS, at present, eighty percent of the current uses within the Tourist Commercial zone are nonconforming; and

WHEREAS, established businesses within the Tourist Commercial zone are unable to expand their businesses; and

WHEREAS, the City of Monroe is proposing text amendments to Monroe Municipal Code (MMC) chapter 22.40, Nonconforming Use and Reuse Standards, to allow expansions of legally established nonconforming uses within the Tourist Commercial zone; and

WHEREAS, an evaluation of the environmental impacts of the amendments to MMC Chapter 22.40, resulted in the issuance of a Determination of Non-Significance (DNS) on March 22, 2021, with no appeals filed; and

WHEREAS, pursuant to RCW 36.70A.106, the City provided the Washington State Department of Commerce with notice of intent to adopt the amendments to its development regulations and was granted a 14-day expedited review; and

WHEREAS, on April 12, 2021, the Monroe Planning Commission held a study session to discuss the proposed amendments to MMC Chapter 22.40; and

WHEREAS, the City issued a Notice of Public Hearing on April 15, 2021, which was at least ten calendar days prior to the date of the public hearing, pursuant to MMC 21.40.020(A)(1); and

WHEREAS, MMC subsection 22.84.060(B)(2) necessitates that amendments to the Unified Development Regulations (MMC Title 22) requires Planning Commission review and recommendation; and

EXHIBIT B

WHEREAS, the Monroe Planning Commission held a duly noticed public hearing on April 26, 2021, to accept public testimony on the proposed code amendments; and

WHEREAS, at the conclusion of the April 26, 2021, public hearing, the Planning Commission voted unanimously to recommend approval of the proposed amendments; and

WHEREAS, the Monroe City Council conducted a first reading of the proposed ordinance on May 11, 2021, and second reading on, 2021, to discuss the proposed amendments to the Monroe Municipal Code at duly noticed public meetings.

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

Section 1. Findings. The above recitals and the content of Agenda Bill Nos. _____ and _____ are hereby adopted as legislative findings in support of the amendments set forth in this ordinance. The City Council further adopts by reference the findings contained in the Planning Commission's April 26, 2021, recommendation and finding of facts.

Section 2. Amendment of MMC Section 22.40. Monroe Municipal Code Section 22.40.070, Nonconforming uses, is hereby amended by the addition of a new subsection (A)(1)(c) to provide in its entirety as follows:

22.40.070 Nonconforming Uses.

A.1.c Improvements, expansions, or additions to existing uses and buildings within the Tourist Commercial zone, considered nonconforming due to the zone in which they are located, are permissible when the improvement, expansion, or addition:

- i. Does not change the existing use, as established, from the effective date of the nonconformance;
- ii. Does not increase the land area devoted to the nonconforming use by more than fifty percent from the effective date of the nonconformity;
- iii. Conforms to required occupancy, setback, lot coverage, landscaping, parking, and all other development standards within the respective zone;
- iv. Meets the applicable design standards prescribed in Chapter 22.42 MMC; and
- v. Provides public improvements, as deemed necessary for the project, such as sewer, water, drainage, pedestrian circulation, and vehicle circulation, in addition to other concurrency provisions.

Section 3. Copy to Commerce. Pursuant to RCW 36.70A.106, a true and correct copy of this ordinance shall be transmitted to the Department of Commerce, Growth Management Services Division, within ten days after adoption.

EXHIBIT B

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

ADOPTED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this _____ day of _____, 2021.

First Reading: May 11, 2021
Adoption:
Published:
Effective:

CITY OF MONROE, WASHINGTON:

(SEAL)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:

Rebecca Hasart, MMC, Interim City Clerk

J. Zachary Lell, City Attorney











Ordinanace 004-2021 Nonconforming Use and Reuse Standards Amendment

Final Audit Report

2021-06-03

Created:	2021-06-02
By:	Becky Hasart (bhasart@monroewa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAACiuxaReYldCt6Eg LX4-yhHlyssEXxtG

"Ordinanace 004-2021 Nonconforming Use and Reuse Standard s Amendment" History

-  Document created by Becky Hasart (bhasart@monroewa.gov)
2021-06-02 - 10:05:35 PM GMT- IP address: 206.208.65.234
-  Document emailed to Zach Lell (zlell@omwlaw.com) for signature
2021-06-02 - 10:06:14 PM GMT
-  Email viewed by Zach Lell (zlell@omwlaw.com)
2021-06-02 - 10:07:14 PM GMT- IP address: 45.41.142.194
-  Document e-signed by Zach Lell (zlell@omwlaw.com)
Signature Date: 2021-06-02 - 10:17:59 PM GMT - Time Source: server- IP address: 23.99.65.220
-  Document emailed to Geoffrey Thomas (gthomas@monroewa.gov) for signature
2021-06-02 - 10:18:00 PM GMT
-  Email viewed by Geoffrey Thomas (gthomas@monroewa.gov)
2021-06-02 - 11:10:12 PM GMT- IP address: 73.239.188.223
-  Document e-signed by Geoffrey Thomas (gthomas@monroewa.gov)
Signature Date: 2021-06-03 - 0:05:12 AM GMT - Time Source: server- IP address: 73.239.188.223
-  Document emailed to Becky Hasart (bhasart@monroewa.gov) for signature
2021-06-03 - 0:05:14 AM GMT
-  Email viewed by Becky Hasart (bhasart@monroewa.gov)
2021-06-03 - 0:06:07 AM GMT- IP address: 104.47.65.254
-  Document e-signed by Becky Hasart (bhasart@monroewa.gov)
Signature Date: 2021-06-03 - 0:06:13 AM GMT - Time Source: server- IP address: 206.208.65.234

✔ Agreement completed.

2021-06-03 - 0:06:13 AM GMT