CITY OF MONROE
ORDINANCE NO. 030/2018

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, AMENDING MONROE MUNICIPAL CODE CHAPTER 5.02, BUSINESS LICENSES; ADOPTING A STANDARDIZED DEFINITION OF "ENGAGED IN BUSINESS," AND ESTABLISHING A MINIMUM THRESHOLD EXEMPTING CERTAIN BUSINESSES FROM LICENSING REQUIREMENTS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the 2017 Legislature passed Engrossed House Bill (EHB) 2005, now codified as Chapter 35.90 RCW, requiring Washington cities and towns with business licenses to create a model business license ordinance with a minimum threshold and a uniform definition of "engaging in business", and

WHEREAS, EHB 2005 also provides that if the City does not adopt such model ordinance language by January 1, 2019, the City would no longer be able to enforce its business licensing requirements;

WHEREAS, City Staff recently reviewed the business licensing process and procedures set forth in Chapter 5.02 of the Monroe Municipal Code; and

WHEREAS, the Monroe City Council reasonably believes that adoption of this Ordinance is furtherance of the health, safety and welfare of the citizens of Monroe;

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

Section 1. Amendment of MMC 5.02.020. Monroe Municipal Code Section 5.02.020, Business Regulations and Licensing – Business Licenses – Definitions – Engaged in business, is hereby amended as follows:

A. "Engaged in business" means commencing, conducting, or continuing in business ((~~or carrying on any form of activity to gain, profit or advantage, whether direct or indirect, with an office or place of business being located within the city.~~)), and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

1. This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes

engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

2. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

   a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

   b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

   c. Soliciting sales.

   d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

   e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

   f. Installing, constructing, or supervising installation or construction of, real or tangible personal property.

   g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.

   h. Collecting current or delinquent accounts.

   i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

   j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

   k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

   l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

n. Investigating, resolving, or otherwise assisting in resolving customer complaints.

o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

3. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license.

   a. Meeting with suppliers of goods and services as a customer.

   b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

   c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

   d. Renting tangible or intangible property as a customer when the property is not used in the City.

   e. Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

   f. Conducting advertising through the mail.

   g. Soliciting sales by phone from a location outside the City.

4. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (c).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to

continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

Section 2. Amendment of MMC 5.02.040(A). Monroe Municipal Code Section 5.02.040, Business Regulations and Licensing – Business Licenses – Exemptions, Subsection A, is hereby amended as follows:

A. The provisions of this chapter shall not apply to:

1. Minors doing business or operating a business concern where no other person is employed by the minor;

2. The United States or any instrumentality thereof and the state of Washington or any municipal subdivision thereof;

3. Participants in a special event pursuant to Chapter 5.28 MMC where the following conditions have been met:

   a. The participant is identified on a list of participants to be provided by the applicant for a license under Chapter 5.28 MMC to the city administrator or designee at least three days in advance of the event;

   b. The participant to be exempt participates in no more than two such street fair events in any calendar year;

4. Persons whose sole activity is the rental of real property;

5. Participants in community-oriented open-air markets operated in accordance with MMC 18.12.190(B);

6. Any person consigning items for sale in a retail shop possessing a valid city of Monroe business license.

7. Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than $2,000 and who does not maintain a place of business within the city shall be exempt from the general business license requirements in this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

Section 3. Filing. This Ordinance will be submitted to the Business License Service of the Department of Revenue by January 1, 2019.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this

ordinance or its application to other persons or circumstances.

Section 5. Effective Date. This ordinance shall be published as required by law and shall be in full force and effect thirty (30) days from and after its final passage, but no sooner than January 1, 2019.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 11th day of December, 2018.

First Reading:	November 27, 2018
Adoption:	December 11, 2018
Published:	December 14, 2018
Effective:	January 10, 2019

(SEAL)

CITY OF MONROE, WASHINGTON:

Geoffrey Thomas, Mayor

ATTEST:

Elizabeth M. Adkisson, MMC, City Clerk

APPROVED AS TO FORM:

J. Zachary Lell, City Attorney