

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE:** 9/11/2017

<b>AGENDA ITEM:</b>	
Licensing Code Amendment	
<b>PREPARED BY:</b>	<b>DIRECTOR APPROVAL:</b>
Jon Walker	
<b>DEPARTMENT:</b>	
Legal	
<b>ATTACHMENTS:</b>	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>
<b>SUMMARY:</b>	

The licensing code, chapter 5.02 MMC, permits a business license to be suspended or revoked only after a hearing before the hearing examiner. This is a cumbersome process and many cities authorize a director to suspend or revoke a business license and provide an appeal process. Staff proposes to authorize the community development director (or designee) to suspend or revoke business licenses. A licensee would then have the opportunity to request a hearing before the hearing examiner.

The licensing code does not provide a summary suspension process. This process would be available only if a business poses a threat to life or property or is involved in criminal activity. A business would receive an appeal hearing within three business days before the community development director. Staff does not anticipate this process being utilized frequently, but it is an important tool should such circumstances arise.

<b>RECOMMENDED ACTION:</b> Staff recommends Council consider adopting the amendments to the licensing code.
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CITY OF MARYSVILLE  
Marysville, Washington

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE,  
WASHINGTON, AMENDING CHAPTER 5.02 OF THE MUNICIPAL CODE  
GOVERNING BUSINESS LICENSES AND ADDING A SECTION PROVIDING  
FOR SUMMARY SUSPENSION OF BUSINESS LICENSES.**

WHEREAS, the municipal code currently authorizes the hearing examiner to suspend or revoke a business license only after a hearing; and

WHEREAS, authorizing the appropriate city staff to administratively suspend or revoke a license would be a simpler, more direct, and more cost effective method of ensuring compliance with the licensing code and thereby enhance public health and safety; and

WHEREAS, providing an opportunity for a hearing before the hearing examiner on the staff decision to suspend or revoke would satisfy due process; and

WHEREAS, authorizing summary suspension or revocation when life or property is endangered by a business's operation or where a business is engaged in criminal activity will enhance public health and safety.

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

SECTION 1. Amendment of Municipal Code Sections. Sections 5.02.010, 5.02.045, and 5.02.110 are amended as set forth in Exhibit A.

SECTION 2. New Municipal Code Section. A new section is added to the municipal code as 5.02.111 as set forth in Exhibit B.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 4. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF MARYSVILLE

By \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

By \_\_\_\_\_  
APRIL O'BRIEN, DEPUTY CITY CLERK

Approved as to form:

By \_\_\_\_\_  
JON WALKER, CITY ATTORNEY

Date of publication: \_\_\_\_\_  
Effective Date (5 days after publication): \_\_\_\_\_

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# EXHIBIT A

## 5.02.010 Definitions.

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Except as otherwise expressly declared or clearly apparent from the content in which used, the following definitions shall be applied in construing the provisions of this chapter:

~~(1) "Person" means one or more natural persons of either sex, corporations, partnerships, associations or other entities capable of having an action at law brought against such entity, but shall not include employees of persons licensed pursuant to this chapter.~~

~~(2)~~ "Business" means all services, activities, occupations, pursuits or professions located and/or performed within the city with the object of pecuniary gain, benefit or advantage to the person, or to another person or class, directly or indirectly, whether part-time or full-time. This definition includes, without limitation, home occupations, peddlers, hawkers, and the rental of four or more residential dwelling units. It also includes the activities of businesses which are located outside the city where sales or services are solicited by the physical presence of business representatives inside the city, and it includes general and specialty contractors with offices outside the city who do work on property located inside the city. Businesses which are exempt from this chapter are listed in MMC [5.02.030](#).

~~"Director" means the means the director of the community development department or his or her designee.~~

~~"Person" means one or more natural persons of either sex, corporations, partnerships, associations or other entities capable of having an action at law brought against such entity, but shall not include employees of persons licensed pursuant to this chapter.~~

## 5.02.045 Procedures for issuance or denial of license.

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After receiving a complete application for a business license the city shall follow the following procedures:

(1) The city of Marysville community development department or designated licensing official shall forward copies of the application to appropriate city officials for their comments regarding compliance with regulations under their jurisdiction. The city of Marysville community development department or designated licensing official shall consider all materials and comments submitted and shall issue or deny the license within 20 ~~(twenty)~~ working days after the date on which a completed application was filed unless the applicant agrees to an extension of said time period in writing.

(2) A business license may only be denied by the city of Marysville community development department or designated licensing official on one or more of the following grounds:

(a) If the business or the premises on which it is located do not comply with all applicable regulatory codes of the city, the Snohomish health district, and the state of Washington;

(b) If the application is incomplete or if it contains any material misrepresentation;

(c) If the application does not propose adequate measures for the protection of public health, safety and welfare in terms of pedestrian and vehicular traffic control, security, avoidance of public nuisances and avoidance of consumer fraud;

(d) If the person making the application, if licensed, is likely to present a danger to the public health, safety, or welfare by reason of any of the following:

(i) The applicant or his or her employee or agent has committed a crime or other violation of law which bears a direct relationship to the conduct of the business under the license issued pursuant to this title. The Director may consider any relevant violation of law regardless of whether the same act was charged as a civil infraction or crime or resulted in a finding of committed or conviction or if it is deferred or subject to pretrial diversion. If an applicant appeals a denial of a license under this subsection, the violation must be proved by a preponderance of the evidence. Provided, however, that a finding of not committed on a civil infraction or a verdict of not guilty on a criminal charge precludes use of that act as a basis for a violation under this chapter.

(ii) The applicant has had a similar license revoked or suspended by the city or has had a similar license revoked or suspended by any other jurisdiction or administrative authority.

(iii) The Director has reasonable grounds to believe applicant to be dishonest or to desire such license to enable applicant to practice some illegal act or some act injurious to the public health or safety.

(e) If the applicant is not qualified under this chapter or is in violation of this chapter.

(3) If the city of Marysville community development department or designated licensing official denies a license, written notice of said denial, stating the reasons therefor, shall be sent to the applicant within one working day thereafter. The applicant shall have a period of 10 working days after the date of license denial to appeal the same to the city's hearing examiner. Upon receiving written notice of appeal the hearing examiner shall hold a

public hearing within 21 (twenty-one) days thereafter to consider, de novo, whether to issue or deny the license. The applicant shall be given not less than seven (7) days' advance written notice of the hearing. The decision of the hearing examiner shall be announced at the conclusion of the hearing and shall be final, subject only to a petition for writ of certiorari being filed with the Snohomish County Superior Court within 14 (fourteen) days following the date of the hearing examiner's decision.

### **5.02.110 Suspension or revocation of licenses.**

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(1) The Director hearing examiner may, ~~at any time,~~ suspend a business license whenever the licensee, or any manager, officer, director, agent or employee of the licensee, has caused, permitted, or knowingly done any of the following:

(a) Failed to keep the building structure or equipment of the licensed premises in compliance with the applicable health, building, fire or safety laws, regulations or ordinances in a way which relates to or affects public health or safety on the business premises;

(b) Failed to comply with the standards of conduct specified in MMC 5.02.090 this chapter;

(c) Whenever the licensee or any manager, officer, director, agent or employee of the licensee engages in or knowingly permits conduct on the licensed premises that violates any federal, state or city law or ordinance;

(d) Whenever operation of the business constitutes a public nuisance.

Such suspension shall remain in effect until the conditions causing the suspension are cured and reasonable measures are taken to ensure that the same will not recur, as determined by the Director hearing examiner.

(2) The Director hearing examiner may, ~~at any time,~~ revoke a business license on any one or more of the following grounds:

(a) Whenever the city learns that the licensee or any manager, officer, director, agent or employee of the licensee made a material false statement or representation, or failed to disclose any material information to the city, in connection with any application for a business license or any renewal thereof;

(b) Whenever the licensee or any manager, officer, director, agent or employee of the licensee fails within a reasonable time to cure a condition that caused a license suspension;

(c) Whenever the licensee or any manager, officer, director, agent or employee of the licensee knowingly permits conduct on the licensed premises that violates any federal, state or city law or ordinance;

(d) Whenever the licensee or any manager, officer, director, agent or employee of the licensee knowingly engages in unfair or deceptive acts or practices in the conduct of the business;

(e) Whenever operation of the business constitutes a public nuisance ~~which endangers persons or property.~~

(3) Whenever the ~~city of Marysville community development department or designated licensing official~~ Director determines that there is probable cause for suspending or revoking a business license, ~~they~~ he or she shall notify the licensee ~~by registered or certified mail, return receipt requested, of such determination. Notice mailed to the address on the license shall be deemed received three days after mailing. The notice shall of the suspension or revocation and~~ specify the ~~proposed~~ grounds for suspension or revocation. ~~The notice shall also specify that a hearing shall be conducted by the hearing examiner at a time and date denominated in the notice, not more than 21 days thereafter, to determine whether or not the license should be suspended or revoked. The notice shall be mailed to the licensee at least five days prior to the date set for the hearing. The licensee may appear at the hearing and be heard in opposition to such suspension or revocation. The decision of the hearing examiner shall be announced at the conclusion of the hearing and shall be final, subject only to a petition for writ of certiorari being filed with the Snohomish County Superior Court within 14 days following the date of the hearing examiner's decision.~~

The Director will notify a licensee of the suspension or revocation of that person's license by personal service or by mailing. If by mailing, the notice shall be mailed first class and certified mail to the address used in the licensee's license application or current address provided by the license holder in writing. A licensee may, within 10 (ten) days from the date that the suspension or revocation notice was delivered or mailed to the licensee, appeal such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the city clerk. The licensee must provide a copy of the petition to the Director and to the city attorney on or before the date the petition is filed with the city clerk. The hearing will be before the hearing examiner and be conducted in accordance with the procedures for adjudicative proceedings under chapter 34.05 RCW. The hearing examiner shall set a date for hearing the appeal and notify the licensee by mail of the

time and place of the hearing. The hearing shall be set no later than 21 (twenty-one) days after the receipt of an appeal. After the hearing, the hearing examiner shall enter appropriate findings of fact and conclusions of law, and affirm, modify, or reverse the decision to suspend or revoke the license.

No suspension or revocation of a license or registration shall take effect until 10 (ten) days after the mailing or hand delivery of the notice to the licensee. If appeal is taken in accordance with this section, the suspension or revocation shall be stayed pending final action by the hearing examiner. A license that is suspended or revoked must be surrendered to the city on the effective date of such suspension or revocation. The decision of the hearing examiner is final. The licensee or the Director may seek review of the decision by the superior court of Washington in and for Snohomish County within 14 (fourteen) days from the date of the decision. The suspension or revocation will be stayed pending final action by the superior court on the petition for review.

No portion of the license fee will be returned to the licensee due to suspension or revocation of the license.



## EXHIBIT B

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### **5.02.111 Summary Suspension.**

(1) Where conditions exist that are deemed hazardous to life or property, or where the owner or his or her employee or agent has knowingly permitted a violation of the uniform controlled substances act, a violation of any law against gambling, a violation of any law against prostitution within the business, or a violation of any law against unlawful public exposure, the Director is authorized to immediately stop such hazardous conditions that are in violation of this code, up to and including closing the business operation. Such order and demand may be oral or written. A police officer or code enforcement officer or fire marshal also may order a business to close under this section. The effect of the closure shall be to suspend the owner's business license until such time it is reinstated by the Director.

(2) At the time the Director notifies the licensee of the summary suspension, either by mail or hand delivery, the Director shall also schedule a hearing to be held within three (3) business days from the date of the notice of summary suspension. Where an oral summary suspension is ordered or demanded by another public official, the Director will schedule a hearing to be held within three (3) business days from the date of the summary suspension and the licensee will be notified by at least one of the following means: mail, facsimile, email, personal service, or hand delivery. Such notices shall state the time and place of the hearing.

(3) The decision of the Director shall be final. The licensee may, within 10 (ten) days from the date of the Director's decision, appeal such suspension or revocation by filing a written notice of appeal setting forth the grounds therefor with the city clerk. A copy of the notice of appeal must be provided by the licensee to the Director and the city attorney on or before the date it is filed with the city clerk. The hearing examiner will set a date for hearing the appeal and notify the licensee by mail of the time and place of the hearing. After the hearing, the hearing examiner will make appropriate findings of fact and conclusions of law and affirm, modify, or reverse the summary suspension and reinstate the license, and may impose conditions on the continuance of the license.

(4) The decision of the hearing examiner shall be final. The licensee and/or the Director may seek review of the decision by the Superior Court of Washington in and for Snohomish County within 21 (twenty-one) days from the date of hearing examiner's decision.