

## **ORDINANCE 2013-16**

### **AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, AMENDING EATONVILLE MUNICIPAL CODE CHAPTER 5.04 “BUSINESS LICENSES” IN RESPONSE TO STATE AND FEDERAL ACTIONS RELATING TO MARIJUANA**

**WHEREAS**, in November 2012, the Washington voters passed I-502 which directed the Washington State Liquor Control Board (LCB) to regulate recreational marijuana by licensing and taxing recreational marijuana producers, processors, and retailers; and

**WHEREAS**, the regulatory scheme in I-502 required the LCB to adopt rules before December of 2013 to address: methods for producing, processing and packaging of recreational marijuana; security requirements for retail outlets; retail outlet locations and hours of operation; labeling requirements; methods of transport of product throughout the state; taxing of marijuana-related activities; and the creation of a dedicated fund consisting of marijuana excise taxes, license fees, penalties and other income; and

**WHEREAS**, the LCB issued proposed new regulations (the “Revised Proposed Rules) on September 4, 2013, which will become final on November 16, 2013; and

**WHEREAS**, the LCB will accept license applications on November 18, 2013 and begin issuing licenses for the production, processing, and retail sale of recreational marijuana sometime after December 19, 2013; and

**WHEREAS**, on December 9, 2013, in response to the LCB’s Revised Proposed Rules and the pending issuance of state licenses for the production, processing, and retail sale of recreational marijuana, the Town adopted Ordinance 2013-15 addressing the land use impacts associated with the recreational marijuana; and

**WHEREAS**, on August 29, 2013, the U.S. Department of Justice (DOJ) issued a memorandum to all U.S. Attorneys acknowledging that several states had adopted laws authorizing marijuana production, distribution, and possession and warning that “[i]f state enforcement efforts are not sufficiently robust to protect against the harms [e.g., criminal involvement in the sale and distribution of marijuana; access to minors; drugged driving; growing of marijuana on federal lands] the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, based on those harms”; and

**WHEREAS**, compared to the LCB’s Revised Proposed Rules, chapter 69.51A RCW relating to medical marijuana demonstrates there is no robust state regulatory system for medical marijuana; and

**WHEREAS**, the Town of Eatonville has adopted local regulations establishing standards and procedures for business licenses, as currently codified in Chapter 5.04 EMC; and

**WHEREAS**, in light of the above-described actions taken by the State of Washington and DOJ relating to recreational marijuana, the Town Council wishes to amend Chapter 5.04 EMC to clarify that a town business license is required for state-licensed producers, processors, and retailers of recreational marijuana operating within Town limits; and

**WHEREAS**, until such time as the State of Washington adopts a more robust regulatory and enforcement system relating to medical marijuana, it is the Town Council's intent that town business licenses shall not be issued to medical marijuana dispensaries or collective gardens because they are prohibited under state and/or federal law; now, therefore,

**BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:**

**Section 1.** The Town Council adopts all of the "Whereas" sections of this Ordinance as findings in support of this Ordinance.

**Section 2.** Section 5.04.020 of the Eatonville Municipal Code is hereby amended to read as follows:

**5.04.020 Definitions.**

In construing provisions of this chapter, the following words and terms shall have the meanings defined in this section, unless from the context a more limited or different meaning is clearly defined or apparent:

A. "Business" includes all activities, occupations, farmers deriving 60 percent or more of their income from farming pursuits or professions located and/or engaged in within the town, with the object of gain, benefit or advantage to the licensee or to another person or class, directly or indirectly. Each business location shall be deemed a separate business. This term shall not include peddlers and hawkers as defined in Chapter 5.08 EMC. ~~For purposes of this Chapter, "Business" also includes medical marijuana dispensaries and collective gardens as defined under Chapter 69.51A RCW.~~

1. For purposes of this chapter, "business" also includes medical marijuana dispensaries and collective gardens as defined under chapter 69.51A RCW and marijuana producers, marijuana processors and marijuana retailers as defined in chapter 69.50 RCW and chapter 314-55 WAC.

B. "Engaging in business" means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating

a business when the liquidators hold themselves out to the public as conducting such a business.

C. "Licensee" includes any person who is engaged in business or who is required to have a business license under this chapter or who performs any act for which a license fee is imposed by this chapter.

D. "License officer" means the employee of the town of Eatonville who is designated to administer this chapter.

E. "Year" means the calendar year.

**Section 2.** Section 5.04.080 of the Eatonville Municipal Code is hereby amended to read as follows:

**5.04.080 Issuance of license.**

A. No license shall be issued until the application has been fully completed and all applicable ordinances have been fully complied with. In addition, any business requiring a state or federal license shall obtain the licenses and provide the town with proof of their issuance prior to the issuance of a town license or any renewal thereof.

B. A business license will not be issued for any activity that is known to violate local, state, and/or federal law, except as otherwise specifically allowed pursuant to chapter 69.50 RCW, chapter 314-55 WAC, and chapter 18.12 EMC "Recreational Marijuana."

**Section 3.** Section 5.04.110 of the Eatonville Municipal Code is hereby amended to read as follows:

**5.04.110 Revocation.**

A. If any person, firm or corporation licensed under this chapter violates any provision of this chapter or the hereinafter set forth restrictions or violates any other town ordinance or provisions thereof, in addition to the criminal penalty provided for in such provisions, the license of the person, firm or corporation shall be revoked or suspended:

1. Not to permit any gambling or immoral conduct on such premises, not to keep, sell, give away or otherwise dispose of any controlled substance or intoxicating liquor on such premises nor permit the same to be kept, sold, given away or otherwise disposed of thereon by any person.

a. The prohibitions contained in this subsection concerning intoxicating liquor shall have no application to establishments from which persons under the age of 21 are excluded either by law or as a matter of business policy nor to a business licensed by the state to sell intoxicating liquor; and

b. The prohibitions contained in this subsection concerning controlled substances shall have no application to recreational marijuana uses licensed by the

state and operated in full compliance with chapter 69.50 RCW, chapter 314-55 WAC, and chapter 18.12 EMC "Recreational Marijuana."

2. Not to have a financial interest in any business within one year from the date of revocation of the business license;

3. Not to permit any intoxicating liquors kept for unlawful use, sale or distribution or allow any act done or any omission to perform a duty, which act or omission shall:

a. Annoy, injure or endanger the safety, health, comfort or repose of any considerable number of persons, or

b. Offend public decency, or

c. Unlawfully interfere with, befoul, obstruct or tend to obstruct or render dangerous for passage a public park, square, street, alley or highway, or stream, or

d. In any way render a considerable number of persons insecure in life or the use of property.

Provided, that the person, firm or corporation may request a hearing before the town council by giving written notice of appeal to the town clerk

**Section 4.** Chapter 5.04 of the Eatonville Municipal Code is hereby amended by adding a new section 5.04.125 "Disclaimer of town liability; indemnification" to read as follows:

**5.12.050 Disclaimer of town liability; indemnification.**

A. Issuance of a license pursuant to this chapter does not constitute the creation of a duty by the town to indemnify the licensee for any wrongful acts against the public, or to guarantee the quality of goods, services or expertise of a licensee. The issuance of a license does not shift responsibility from the licensee to the town for proper training, conduct or equipment of the licensee or his agents, employees or representatives, even if specific regulations require standards of training, conduct or inspection. Issuance of the license does not exempt the licensee from other required permits or licenses.

B. For all town business licenses issued to businesses operating under chapter 69.50 RCW, chapter 314-55 WAC, and chapter 18.12 EMC "Recreational Marijuana:"

1. All licensees waive and release the Town, its officers, elected officials, employees, volunteers and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of business owners, operators, employees, clients or customers for a violation of federal, state or local laws and regulations; and

2. All licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, volunteers and agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property

loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the recreational marijuana business that is the subject of the license.

**Section 5.** 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 preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 6.** This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 11/25/2013

2ND READING: 12/09/2013

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this 9<sup>th</sup> day of December 2013.

\_\_\_\_\_  
Ray Harper  
Mayor

ATTEST:

\_\_\_\_\_  
Kathy Linnemeyer  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gregory A. Jacoby  
Town Attorney

# TOWN OF EATONVILLE

## Agenda Staff Report

Agenda Item No.:	_____	Meeting Date:	<u>November 25, 2013</u>
Subject:	<u>Ordinance 2013-16 Amending EMC</u>	Prepared by:	<u>Gregory Jacoby</u>
	<u>Chapter 5.04 "Business Licenses" in</u>		<u>Town Attorney</u>
	<u>Response to Federal and State Action</u>	Atty Routing No:	<u>031-13</u>
	<u>Relating to Marijuana</u>	Atty Review Date:	<u>November 18, 2013</u>

**Summary:** The town attorney has recommended minor changes to the town's business license regulations, chapter 5.04 EMC, to be adopted in conjunction with the town's proposed new interim recreational marijuana regulations. The proposed changes to the business license regulations distinguish between recreational and medical marijuana uses. A town business license would be issued for state liquor control board-licensed recreational marijuana uses that fully comply with state and local law. However, until such time as the state legislature adopts a regulatory scheme for medical marijuana that is satisfactory to the U.S. Department of Justice, the town will continue to deny business licenses for medical marijuana uses. In addition a provision regarding liability and indemnity has been added at the recommendation of the town's insurer.

**Recommendation:** Staff recommends approval of the first reading of Ordinance 2013-16.

**Motion for consideration:** I move to approve the first reading of Ordinance 2013-16 amending Eatonville Municipal Code chapter 5.04 "Business Licenses" in response to federal and state action relating to marijuana.

**Fiscal Impact:** None.

**Attachments:** Ordinance 2013-16