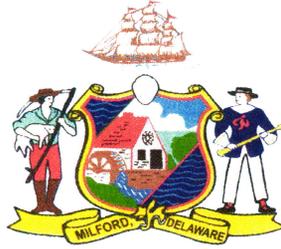


City of Milford



City Council Committee Meeting Agenda

Committee Meeting

March 14, 2016

*Joseph Ronnie Rogers Council Chambers, Milford City Hall
201 South Walnut Street, Milford, Delaware*

COMMUNITY AFFAIRS COMMITTEE

5:30 p.m.

Call to Order - Chairman Chris Mergner

International Property Maintenance Code Update

Vacant Building Ordinance

Residential and Commercial Building Code Update

Residential Rental Permit Fee

Business Licenses

Adjourn

This agenda may be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED OR DISTRIBUTED AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.



COMMUNITY AFFAIRS COMMITTEE

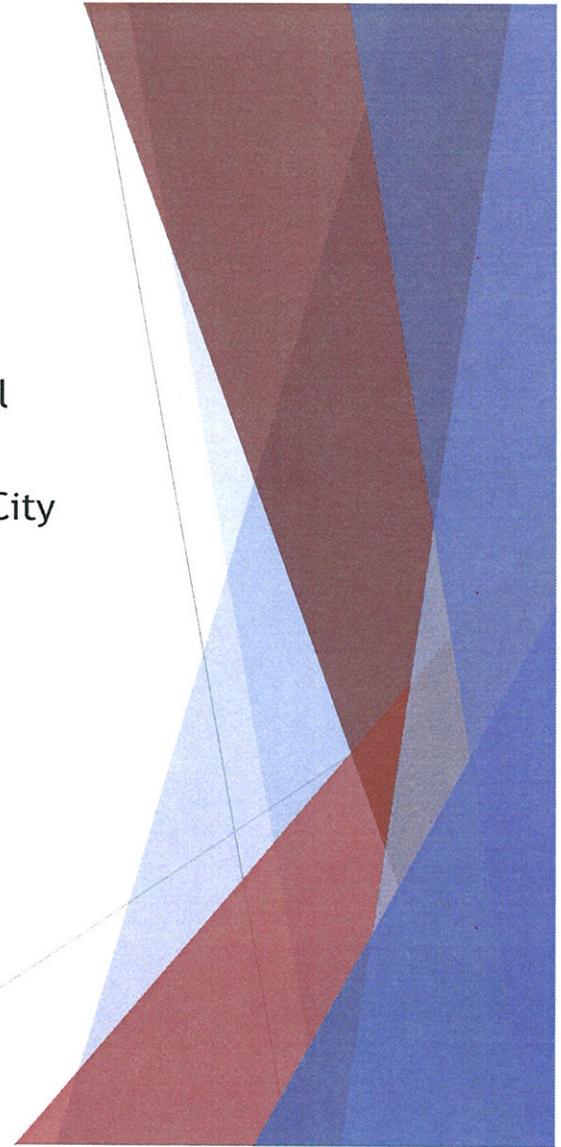
March 14, 2016

International Property Maintenance Code (IPMC) Update

- ▶ Update from 2006 IPMC to 2015 IPMC.
- ▶ Two main modifications between versions.
 - ▶ 2015 has added the area requirements for rooms.
 - ▶ 2015 has an appendix which provides details for proper boarding of vacant structures.
- ▶ Additions, Insertions and changes.
 - ▶ Refined the parking condition requirements.
 - ▶ Modified the language regarding the board of appeals and its membership.

Vacant Building Ordinance

- ▶ Would require the annual registration of vacant residential and commercial buildings.
- ▶ Purpose is to protect the health, safety and welfare of the citizens of the City and promote efforts to rehabilitate vacant structures.
 - ▶ Fire safety hazards.
 - ▶ Unlawful temporary occupancy by transients.
 - ▶ Unlawful occupancy by illicit drug users and traffickers.

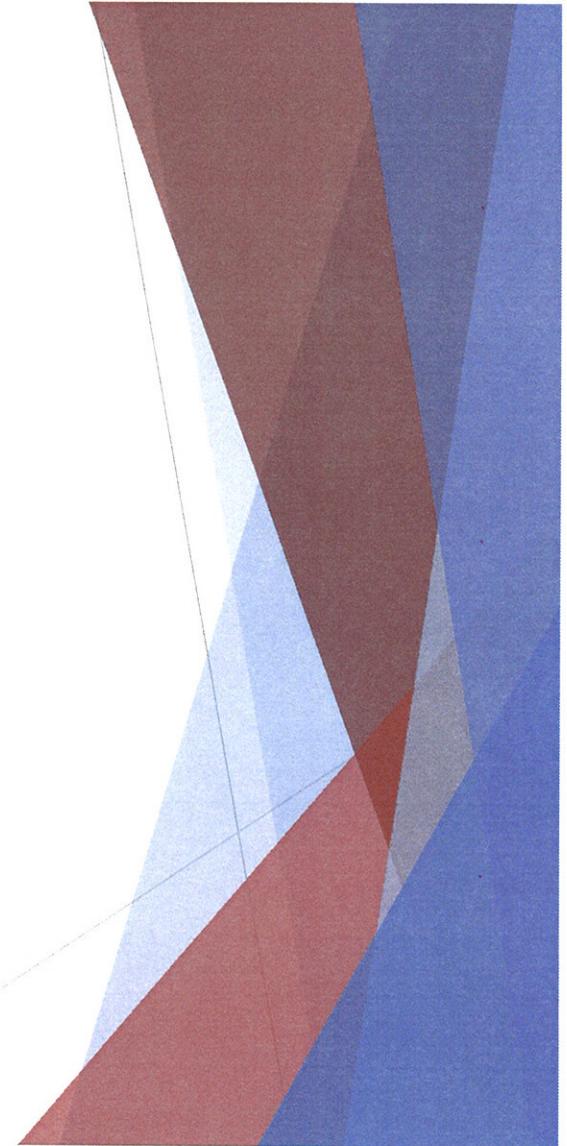


Vacant Building Ordinance (cont.)

- ▶ The annual registration fee would be based on the duration of the vacancy.
 - ▶ No fee for properties that are vacant for less than one year.
 - ▶ \$500 for properties that are vacant for at least one year but less than two years.
 - ▶ \$1,000 for properties that are vacant for at least two years but less than five years.
 - ▶ \$2,000 for properties that are vacant for at least five years, plus an additional \$500 for each year in excess of ten years.
- ▶ The fees generated would fund other property maintenance remedial actions.
 - ▶ Create a community grant program to assist low income property owners with property maintenance and minor rehabilitation projects in order to come into compliance with the City's property maintenance code.

Residential and Commercial Building Code Update

- ▶ City operates under the International Residential Code (IRC) 2006 and International Building Code (IBC) 2006.
- ▶ Surrounding jurisdictions and other review agencies have adopted more current versions.
- ▶ The Enforcement and Inspection Department would like to adopt the 2015 version of the IRC and IBC



Residential and Commercial Building Code Update (cont.)

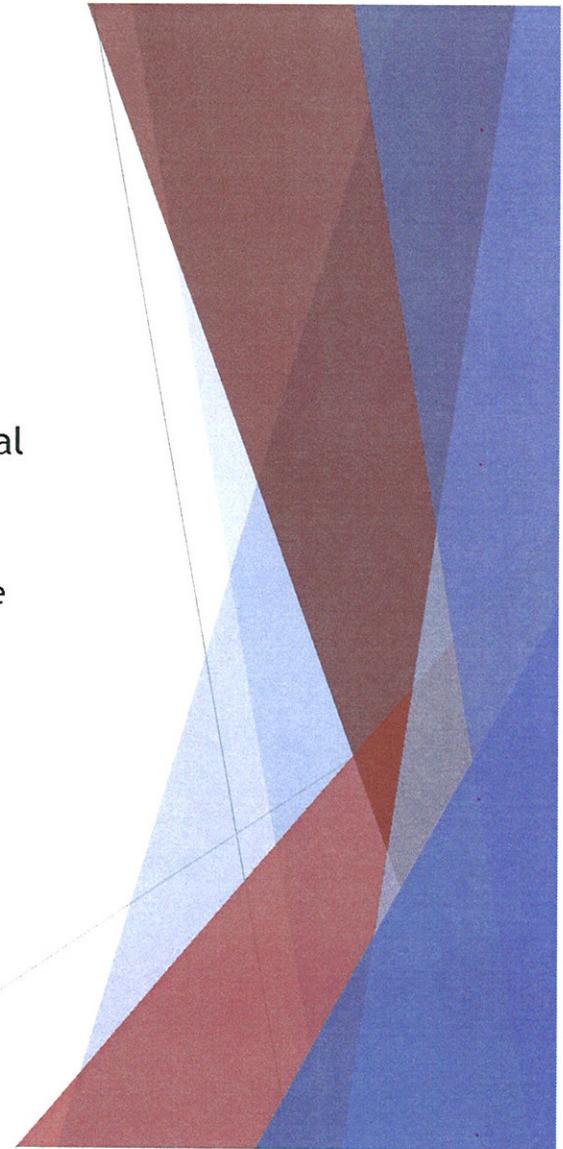
- ▶ Process would compare the major differences between versions for review of impact, both positive and negative, on the City, its residents, and contractors.
- ▶ Gather information from other local jurisdictions regarding amendments to the IRC and IBC for consistency purposes.
- ▶ Require additional committee meetings and/or Council workshops outlining findings and major changes.
- ▶ Public participation will be encouraged, especially with business owners, developers and contractors.
- ▶ Process will take several months.

Residential Rental Permits

- ▶ Crime Free Housing Program
- ▶ Provide lease agreement addendum to require the landlord to terminate lease for the following;
 - ▶ Occupancy by more persons than permitted under Delaware Code Title 31.
 - ▶ A number of convictions of any occupant and/or user for violation of certain unlawful acts within a specified period of time.
 - ▶ Engaging in any use prohibited by the zoning code.
 - ▶ Using or permitting the use of the rental unit for prostitution, gambling and/or any drug offenses in violation with State law.
- ▶ Add language that any violation of these conditions is declared to be a “material breach of an obligation imposed upon tenants” by the Code of the City in accordance with Title 25 section 5513(a)(3) which states;
 - ▶ “If the tenant’s breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state code, ordinance or statute, the landlord may terminate the rental agreement and bring action for summary possession.

Residential Rental Permits

- ▶ Would require all persons applying for a rental dwelling license, and all persons administering, managing and controlling the operation of any rental unit, to attend a crime-free housing seminar.
 - ▶ Certified property managers, licensed real estate agents, State agencies and professional companies whose main business is managing properties for rent are exempt from this requirement.

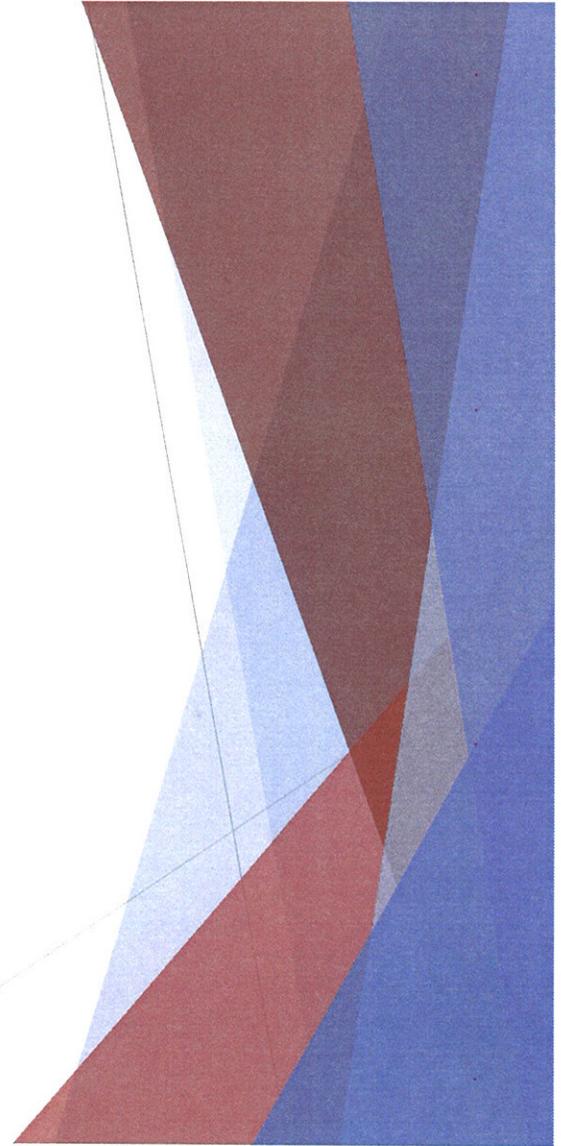


Residential Rental Permits (cont.)

- ▶ Potential increase in residential rental unit permit fee.
 - ▶ Milford - \$50 per unit (current)
 - ▶ Harrington - \$75 per unit
 - ▶ Smyrna - \$55 per unit, additional \$35 per inspection
 - ▶ Georgetown - \$65 per unit
 - ▶ Seaford - No License
- ▶ Revenue generated would be used to hire an additional code enforcement officer to assist with property maintenance and rental inspections.
- ▶ There are approximately 1,600 rental units within City limits.

Business Licenses

- ▶ Identify owners/operators of businesses.
- ▶ Track changes in ownership and/or business activity.
- ▶ Define the nature of business activities.
- ▶ Ensure the understanding of, and compliance with, City codes governing business operations, commercial building codes, land use and zoning requirements.



Business Licenses (cont.)

- ▶ Harrington - \$50, \$250-\$500 for distributors based on employment level
 - ▶ Smyrna - \$50
 - ▶ Georgetown - \$78 (1-10 employees), \$180 (11-50), \$270 (51 and greater)
 - ▶ Seaford - No License
- ▶ Note: City of Milford currently charges contractors, vendors, and transient merchants \$100 per year.

Chapter 174 - PROPERTY MAINTENANCE

GENERAL REFERENCES

Building construction — See Ch. 88.	Residential rental operating licenses — See Ch. 180.
Floodplain management — See Ch. 130.	Solid waste — See Ch. 193.
Property maintenance — See Ch. 174.	Zoning — See Ch. 230.

§ 174-1. - Adoption of Property Maintenance Code.

A certain document, three copies of which are on file in the office of the City Clerk of the City of Milford, Delaware, being marked and designated as the International Property Maintenance Code, 2006 2015 edition, as published by the International Code Council, is hereby adopted as the Property Maintenance Code of the City of Milford, in the State of Delaware, for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the City of Milford are hereby referred to, adopted, and made a part hereof, as if fully set out in this chapter, with the additions, insertions, deletions and changes, if any, prescribed in § 174-2 of this chapter.

§ 174-2. - Additions, insertions and changes.

The following sections are revised as follows:

- A. Section PM-101.1. Insert: City of Milford.
- B. Section PM-103.5. Add: Fees shall be assessed as described throughout this chapter.
- C. Section PM-104.8.7 Add: Conflict of interest. No officer or employee who has an official duty in connection with the administration and enforcement of this chapter shall be financially interested in the furnishing of labor, materials or appliances or the construction, alteration or maintenance of a building or in making the plans or specifications therefor unless that person is the owner of such building. No such officer or employee shall engage in any activity which is inconsistent with the public interest and the officer's official duties.
- D. Section PM-106.4. Add: Any person or persons who shall violate a provision of this code shall, upon conviction thereof, shall be fined not less than \$50 nor more than \$1,000. ~~For repeated offenses within the same calendar year, fines will double for each continued offense (e.g., \$50, \$100, \$200, etc.)~~
- E. Section PM-108.3. Add: If the owner or a holder of a lien of record cannot be found, the order may be served by posting it on the main entrance of the building and by publishing it once each week for three successive weeks in a newspaper of general circulation.
- F. Section PM-111.1 Application for Appeal. Appeals of orders, decisions, or determination made by the Building and/or Code Official relative to the application and interpretation of this code, shall proceed as described in Chapter 88, Article III of the Code of the City of Milford.

G. ~~Reserved.~~ Section PM-112.4. Add: Insert \$250: Insert \$1000

H. Section PM-202. Add the following definitions:

INDOOR FURNITURE — Furniture and similar objects that are not specifically designed by the manufacturer to withstand the elements or are otherwise not intended for outdoor use. Indoor furniture includes, but is not limited to, beds and upholstered chairs, love seats and couches.

OUTDOOR AREA — That portion of real property or the improvement located thereon that is not fully enclosed and fully roofed so as to provide effective protection from the elements. Outdoor areas include, but are not limited to, sidewalks, yards, driveways, unenclosed porches, patios and balconies.

I. Section PM-302.3. Parking areas. All vehicles must park on an approved parking surface. ~~Minimum parking surface must be comprised of at least gravel.~~ Approved parking surfaces include the following; crushed stone, gravel or similar material installed to a depth approved by the Code Official; asphalt, concrete, brick, paving block, or similar durable, dustless surface. Grass or dirt surfaces are not approved surfaces. All parking areas must be maintained in good order and free from vegetation, standing water and structural defects.

J. Section PM-302.4, Weeds.

(1) Insert: 6 inches.

(2) Add: When cutting the grass as part of yard maintenance, all grass clippings must be removed immediately from the sidewalk and out of the street upon completion.

(3) Add: Notice of violation; removal by the City. The owner or agent of the property has five working days, after receipt of said notice, to comply with notice. No such notice shall be required for second and/or subsequent violations in the same calendar year. The notice shall be served upon the property owner or agent acting on behalf of the property owner. If the premises is vacant or unoccupied, notice may be served by posting of a notice placard on the premises and mailing a copy of said notice to the owner or his/her agent at his/her last known address. The City may cause the vegetation to be cut and removed and will impose a fee of \$100 per man hour, plus 10% for inspection and other added costs or fees that might be incurred to render the property in compliance with this chapter. In extreme cases, the fee will be levied in accordance with actual costs of equipment and personnel, and the hourly rate could be higher. These costs shall become and form part of the taxes next to be assessed and levied upon such lot or land and shall bear interest at the same rate as taxes and shall be collected and enforced by the same officers and in the same manner as taxes.

K. Section PM-302.10. Add: Indoor furniture in outdoor areas.

(1) No person shall place, use, keep, store or maintain in any outdoor area any ~~damaged, discarded, abandoned, or unused~~ appliance, mattresses, indoor furniture, furnishings, or decorations customarily associated with the interior portion of a residential dwelling in any outdoor area.

(2) Notice and removal. An occupant(s) shall receive a notice in the form set forth in Section PM-107 to remove said appliance, mattresses, indoor furniture, furnishings or decorations. If the appliance, mattresses, indoor furniture, furnishings or decorations are not removed within ~~44~~ 5 days of notification, the Code Official or his/her designated agent will have them removed and collected by the City of Milford, not as a regular service, but at a rate determined by the Code Official or his/her designee, and appropriate fees will be applied to the next utility bill for the address.

L. ~~Section PM-304.3. Add: Failure to post numbers. If the owner of any building fails to post the proper number or numbers within 30 days after the numbers have been duly assigned, the Code Official shall post them and shall charge the cost incurred to the owner of the property.~~

M. Section PM-304.14. Insert: April 1 to October 1 (date in two locations).

N. Section PM-602.3. Insert: October 1 to April 30 (date in two locations).

O. Section PM-602.4. Insert: October 1 to April 30 (date in two locations).

P. Include: Appendix A

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ARTICLE III - Board of Appeals

§ 88-6. - General. In order to hear and decide appeals of orders, decisions, or determinations made by the building or code official relative to the application and interpretation of the code, there shall be and is hereby created a board of appeals. **The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.**

§ 88-7. - Limitations on authority.

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

§ 88-8. - Membership of the board.

~~The Board of Appeals shall consist of three members: the City Manager or his designate, a design professional (architect or engineer), and a representative of the contracting industry. The City Manager or his designate will be a standing member of the Board of Appeals. City Council shall appoint the design professional and the representative from the contracting industry. The initial term of the design professional shall be two years and the initial term of the representative of the contracting industry shall be for one year. The term of all subsequent appointments shall be two years.~~ **The Board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction. City Council shall appoint three members for terms of three years, provided that the terms of the original members shall be established in a manner that the term of at least one member shall expire each year and the successor shall be appointed for a term of three years.**

§ 88-8.1. - Alternate members.

City Council Planning Commission shall appoint an individual of its choice to be an alternate during those times where one of the permanent members is unable to attend an appeals hearing or in cases where a conflict of interest may exist. Said appointment shall be made for a two-year term.

§ 88-8.2. - Chairman **person**.

The Board shall annually select one of its members to serve as chairman **person**.

§ 88-8.3. - Disqualification of member.

A member shall not hear an appeal in which that member has a personal, professional or financial interest.

§ 88-8.4. - Secretary.

The City Manager shall designate a qualified clerk or staff as Secretary to the Board. The Secretary shall file a detailed record of all proceedings with the office of the City Clerk. Secretary shall have no right to vote on matters coming before the board.

§ 88-8.5. - Compensation of members.

Compensation of members shall be determined by ordinance of City Council.

§ 88-9. - Application for appeal.

Any person directly affected by a decision of the Code Official or an notice or order issued under this code shall have the right to appeal a decision of the Code Enforcement and/or Building Official to the Board of Appeals provided the application is filed within 20 days of the day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of the code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not apply or that an equivalent form of construction is to be used.

§ 88-9.1. - Hearing fee.

The following **nonrefundable** fee schedule shall apply for hearings of the Board of Appeals:

International Residential Code: \$300.00

International Building Code: \$1,000.00

International Property Maintenance Code: \$300.00

§ 88-10. - Notice of meeting.

The Board shall meet upon notice from the Chairman **person**. The meeting date and time shall be scheduled in accordance with the state guidelines for public hearings. Surrounding property owners within 200 feet of the property or building in question shall be notified by mail.

§ 88-11. - Open hearing.

All hearings before the Board shall be open to the public. The appellant's representative, the Code Official and any other person or persons that may be deemed necessary as witnesses and all other persons whose interests are affected shall be given an opportunity to be heard.

§ 88-11.1. - Procedure.

The hearing shall address only those issues or items that may be deemed relevant to the case being heard. The Board shall adopt and publish, for public information, the procedures under which the hearing will be conducted.

§ 88-12. - Postponed hearing.

When there are fewer than two members of the Board available and the authorized or appointed alternate is unavailable, notification shall be given to the interested parties.

§ 88-13. - Board decision.

The Board shall affirm, modify or reverse the decision of the Code Official by means of a simple majority.

§ 88-13.1. - Records and copies.

The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the appropriate Building or Code Official.

§ 88-13.2. - Administration.

The appropriate Building or Code Official shall take immediate action in accordance with the decision of the Board.

§ 88-14. - Court review.

Any person, whether or not a previous party of the appeal, shall have the right to apply to the Superior Court of the State of Delaware in the applicable county for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law, following the filing of the Board's decision in the Office of the City Clerk.

§ 88-15. - Stays of enforcement.

Appeals of notices and orders (other than Imminent Danger Notices) shall stay the enforcement of the notice and order until the appeal is complete or the stay is lifted by the Superior Court.

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Chapter 174 – Property Maintenance

ARTICLE II. - ANNUAL REGISTRATION OF VACANT BUILDINGS AND REGISTRATION FEES

§174-3. - Purpose.

The purpose of this section is to assist the City government, particularly the Department of Enforcement and Inspections in protecting the public health, safety and welfare, to monitor the number of vacant buildings in the City, to assess the effects of the condition of those buildings on nearby businesses and the neighborhoods in which they are located, particularly in light of fire safety hazards and unlawful, temporary occupancy by transients, including illicit drug users and traffickers, and to require of the owners of such vacant buildings their registration and the payment of related fees, and to promote substantial efforts to rehabilitate such vacant buildings. The provisions of this section are applicable to the owners of such vacant buildings as set forth herein and are in addition to and not in lieu of any and all other applicable provisions of this chapter and any other applicable provisions of the City of Milford Code.

§174-4. - Definitions and applicability; registration statement and fees.

- (a) *Definitions.* For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as follows:
- (1) *Boarded:* A building or structure subject to the provisions of this section shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.
 - (2) *Exterior maintenance and major systems:* The phrase "exterior maintenance and major systems" shall mean the safe and lawful maintenance of the facade, windows, doors, roof, and other parts of the exterior of the building and the maintenance of its major systems consisting of the roof, the electrical and plumbing systems, the water supply system, the sewer system, and the sidewalk, drive-way, if any, area of the lot, as applicable and as enforced by the Department of Enforcement and Inspections.
 - (3) *Occupied:* Any building or structure shall be deemed to be occupied if one or more persons actually conducts a lawful business or resides in all or any part of the building as the licensed business-occupant, or as the legal or equitable owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of the same. For purposes of this section, evidence offered to prove that a building is so occupied may include, but shall not be limited to, the regular receipt of delivery of regular mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating, water and/or sewer services; or the most recent, federal, state, or city income tax statements indicating that the subject property is the official business or residence address of the person or business claiming occupancy; or proof of pre-rental inspection.
 - (4) *Open:* A building or structure subject to the provisions of this section shall be deemed to be "open" if any one or more exterior doors other than a storm door is broken, open and, or closed but, without a properly functioning lock to secure it, or if one or more windows is broken or not capable of being locked and secured from intrusion, or any combination of the same.
 - (5) *Owner:* An owner of the freehold of the premises or any lesser estate therein, a mortgagee, a vendee-in-possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is directly or indirectly in control of a building subject to the provisions of this section, and as set forth below.
 - (6) *Vacant:* A building or structure shall be deemed to be vacant if no person or persons actually, currently conducts a lawfully licensed business, or lawfully resides or lives in any part of the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, non-transient basis.

- (7) *Vacant, for sale or lease:* A vacant building or structure shall be deemed for sale or for lease if it is being actively marketed by a licensed real estate broker or owner who is regularly advertising the property in newspapers circulated in the City of Milford, is offered at a price that is not more than 25 percent above the market value, and is in reasonable condition for sale or lease as determined by the City code official.
- (b) *Applicability.* The requirements of this section shall be applicable to each owner of any building that is not a dwelling that shall have been vacant for more than 60 consecutive days and to each owner of residential property consisting of one or more vacant dwellings that shall have been vacant for more than 60 consecutive days. Each such owner shall cause to be filed a notarized registration statement, which shall include the street address and parcel number of each such vacant building, the names and addresses of all owners, and any other information deemed necessary by the Department of Enforcement and Inspections. The registration fee(s) as required by subsection (c) of this section shall be billed by the City and shall be paid by **December 31 of each year.**
- (c) *Registration statement and fees; local agent.* If none of the persons listed, as above, is shown at an address within the state, the registration statement also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owners and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and for purposes of service of any and all notices or registration statements as herein authorized and in connection herewith.

Registration shall be required for all vacant buildings, whether vacant and secure, vacant and open or vacant and boarded, and shall be required whenever any building has remained vacant for 60 consecutive days or more. In no instance shall the registration of a vacant building and the payment of registration fees be construed to exonerate the owner, agent or responsible party from responsibility for compliance with any other building code or housing code requirement. One registration statement may be filed to include all vacant buildings of the owner so registering.

The owner of the vacant property as of **November 30 of each calendar year**, as determined by the City assessment records, shall be responsible for the payment of the non-refundable annual registration fee. Said fee shall be billed by the Department of Enforcement and Inspections and based on the duration of the vacancy as determined by the following scale:

- (1) No fee for properties that are vacant for less than one year;
- (2) \$500.00 for properties that are vacant for at least one year but less than two years;
- (3) \$1,000.00 for properties that are vacant for at least two years but less than five years;
- (4) \$2,000.00 for properties that are vacant for at least five years, plus an additional \$500.00 for each year in excess of ten years.

The starting point for counting a building as being vacant shall begin on the effective date of this article.

- (d) *Appeal rights.* The owner shall have the right to appeal the imposition of the registration fees to the board of appeals, upon filing an application in writing with the applicable \$50.00 non-refundable filing fee to the Department of Enforcement and Inspections no later than 15 calendar days after the date of the billing statement. On appeal, the owner shall bear the burden of providing satisfactory objective proof of occupancy, as defined herein.
- (e) *One time waiver of registration fee.* A one-time waiver of the registration fee may be granted by the board of appeals upon application of the owner if the owner:
- (1) Demonstrates with satisfactory proof that he/she is in the process of demolition, rehabilitation, or other substantial repair of the vacant building; and
 - (2) Objectively demonstrates the anticipated length of time for the demolition, rehabilitation, or other substantial repair of the vacant building; or

- (3) Provides satisfactory proof that he/she was actively attempting to sell or lease the property during the vacancy period.
- (f) *Two-year waiver.* Upon application by the owner, the board of appeals may grant a two-year waiver of the registration fee if the owner meets the criteria for non-profit organizations as defined by Section 501(c)(3) of the Internal Revenue Code.
- (g) *Delinquent registration fees as a lien.* After the owner is given notice of the amount of the registration fee due, except for those owners that have properly perfected an appeal pursuant to subsection (d) above, and the owner fails to pay the amount due, said amount shall constitute a debt due and owing to the City, and the City may commence a civil action to collect such the unpaid debt.
- (h) *Duty to amend registration statement.* If the status of the registration information changes during the course of any calendar year, it is the responsibility of the owner, former owner, responsible party or agent for the same to contact the Department of Enforcement and Inspections within 30 days of the occurrence of such change and advise the department in writing of those changes.
- (i) *Exceptions.* This section shall not apply to any building owned by the United States, the state, the City, nor to any of their respective agencies or political subdivisions.
- (j) *Violations; penalties.* The failure or refusal for any reason of any owner, or agent of an owner acting on behalf of the owner, to register a vacant building or to pay any fees required to be paid pursuant to the provisions of this section, within 30 days after they become due, shall constitute a violation punishable upon conviction thereof by a fine in the amount of not less than \$100.00 nor more than \$500.00 for each failure or refusal to register, or for each failure or refusal to pay a required vacant building fee, as applicable. In such cases, whenever the minimum fine of \$100.00 is imposed, it shall not be subject to suspension or reduction for any reason.
- (k) *Denial of demolition permit.* No demolition permit shall be issued for the demolition of any dwelling which is subject to the provisions of the building code requiring the annual registration of such dwelling and the payment of vacant dwelling registration fees if, as determined by the code official, the dwelling has not been so registered or such registration fees have not been paid; provided, however, the code official may issue a demolition permit if in his judgment the immediate demolition of the dwelling is required for the safety of nearby residents, or in an emergency, or if the code official determines that rehabilitation of such dwelling is not financially feasible. Upon proper registration of such dwelling and payment of vacant dwelling registration fees, the code official may issue a demolition permit.
- (l) *Monitoring, inspection and condition standards.* The code official shall inspect any building in the City for purposes of this section, and the owner of such building shall permit access to all parts of the interior upon request. The vacant building shall be secured at all times. The vacant building shall be kept in reasonable condition, all utilities shall be functional, there shall be no trash or debris inside or outside the building, and the building shall not be used as storage that is unrelated to its former use.
- (m) *Interpretation.* The City manager shall have the authority to make determinations regarding the ownership and/or responsible party for any building determined to be vacant pursuant to this section.
- (n) All vacant building registration fees paid to the City pursuant to subsection (c) of this article and all penalties paid to the City pursuant to subsection (j) of this article shall be held in an account separate and apart from the general revenues of the City for use by the City to bring properties into the compliance with the City Code whenever a property owner fails to perform the required remedial actions after having been duly notified by the City. The City shall make reasonable efforts to exhaust all available legal remedies to recover from the property owner any expenditure of funds made from this account. All funds recovered from such actions shall be deposited back into the special account until the amount exceeds \$50,000.00. Any amounts in excess of \$50,000.00 in the account may be transferred to the general fund by majority vote of the City Council.

City of Harrington, DE
Wednesday, March 9, 2016

Chapter 314. Rental Properties

[HISTORY: Adopted by the Mayor and Council of the City of Harrington as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Business licenses — See Ch. **120**.

Municipal Fees — See Ch. **180**.

Fire hazards — See Ch. **205**.

Property maintenance — See Ch. **305**.

Article I. Rental Unit Licenses

[Adopted 6-21-2004 by Ord. No. 04-01]

§ 314-1. License required; fee; crime-free housing seminar; crime-free lease addendum; eviction.

- A. Purpose. The purpose and intent of this chapter are to ensure public health, safety, and welfare insofar as they are affected by the continued occupancy and maintenance of dwellings operated for lease to the public. The health, safety, and welfare of the occupants of the dwellings are of the utmost importance to the City, as is the general community character in which these dwelling units are located.
[Amended 12-15-2008 by Ord. No. 08-07; 2-18-2014 by Ord. No. 14-01]
- B. Each person, partnership, corporation or other artificial entity who or which rents or offers to rent any apartment, house, or other dwelling unit shall obtain a license and pay an annual license fee as set forth in Chapter **180**, Municipal Fees, for each such apartment, house, or dwelling unit. No person, partnership, corporation, or other artificial entity shall rent or offer to rent any apartment, house, or other dwelling unit within the City without a license and paying the annual license fee. A rental dwelling unit is any apartment, house, or other dwelling unit occupied or available for occupancy by one or more persons, other than the owner of record, under a rental agreement, implied or written, with or without compensation, whether the rental dwelling be a multiple dwelling, single-family detached, single-family attached, or single-family semi-detached.
[Amended 2-18-2014 by Ord. No. 14-01]
- C. All persons applying for a rental dwelling license, and all persons administering, managing, or controlling the operation of any rental dwelling unit, must attend a crime-free housing seminar, approved by the Harrington Police Department, within 12 months of issuance of the license. Thereafter, each rental license holder and each rental property manager must attend a refresher seminar every three years. Documentation shall be submitted to the

City Clerk and kept on file within the department.

[Added 3-18-2013 by Ord. No. 13-03; amended 11-17-2014 by Ord. No. 14-16]

(1) Certified property managers, licensed real estate agents, State of Delaware agencies, and professional companies whose main business is managing properties for rent, such as apartment complexes, are exempt from the requirement to attend a crime-free housing seminar except under the following circumstances:

(a) When a rental license has been suspended in accordance with § **314-2B(1)**, the licensed property owner and/or property manager shall attend the crime-free housing seminar prior to reinstatement of the suspended rental dwelling permit.

(b) If the tenant, any member of the tenant's household, any guest, or other person associated with the tenant has engaged in criminal activity on or within 500 feet of the leased premises on three or more occasions within a twelve-month period, the property owner and/or the property manager shall attend the crime-free housing seminar.

D. All residential leases shall be in writing and shall include a crime-free lease addendum, signed by the property owner and tenant, in the following form:

[Added 3-18-2013 by Ord. No. 13-03]

In addition to all other terms of the lease, landlord and tenant agree as follows:

(1) The tenant, any member of the tenant's household, any guest, or any other person associated with the tenant on or within 500 feet of the leased premises:

(a) Shall not engage in criminal activity, including drug-related criminal activity, on or within 500 feet of the leased premises. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession of any illegal or controlled substance defined by Title 16.

(b) Shall not engage in any act intended to facilitate criminal activity.

(c) Shall not permit the dwelling unit to be used for or to facilitate any criminal activity.

(2) Any activity prohibited by this agreement shall constitute a substantial violation of the lease, material noncompliance with the lease, and grounds for termination of tenancy and eviction.

E. The City shall provide a template crime-free lease addendum.

[Added 3-18-2013 by Ord. No. 13-03]

F. A copy of the signed lease, including the crime-free lease addendum, shall be submitted to the City upon the request of the City Manager.

[Added 3-18-2013 by Ord. No. 13-03]

G. Eviction required.

[Added 3-18-2013 by Ord. No. 13-03]

(1) If the tenant, any member of the tenant's household, any guest or other person associated with the tenant engages in criminal activity on three or more occasions within a twelve-month period, the property owner or property manager shall begin the process to terminate tenancy.

(2) Upon notification by the Chief of Police that termination of tenancy is required in accordance with Subsection **G(1)**, the City Manager shall notify the property owner and property manager that he or she has 30 days to initiate the eviction or otherwise terminate the tenancy. Such notice shall be sent by certified mail to the property owner and property manager if a property manager is on record with the City.

- H. In the context of federally subsidized housing units, this article does not provide for superseding any lease provisions or rules or regulations required or permitted by federal law, federal regulations, guidelines, or policy.

[Added 11-17-2014 by Ord. No. 14-16]

§ 314-1.1. Criminal activity prohibited.

[Added 3-18-2013 by Ord. No. 13-03]

Tenants of a rental dwelling, all members of the tenant's household, any guest or other person associated with the tenant shall not engage in criminal activity on the leased premises or within 500 feet of the lot on which the rental dwelling is situated. For the purposes of this article, "criminal activity" means any crime classified by applicable law as a felony or a class A misdemeanor in addition to the following offenses: noise violations, drug offenses, offensive touching, menacing, vehicular assault, sexual harassment, indecent exposure, graffiti, criminal mischief, trespassing, criminal trespassing, crime against a vulnerable adult, unlawfully dealing with a child, disorderly conduct, malicious interference with emergency communications, public intoxication, loitering, criminal nuisance, obstructing of public passage, lewdness, prostitution, patronizing a prostitute, unlawfully dealing with a dangerous weapon, or unlawfully dealing with a switchblade knife.

§ 314-2. Enforcement; grounds for supervision of rental license.

[Amended 3-18-2013 by Ord. No. 13-03]

- A. The City Manager, and/or his/her designee, shall, unless specifically provided otherwise, supervise the enforcement of this article and have authority to grant, deny or revoke licenses.
- B. The following actions may be grounds for suspension of the rental license in accordance with this article:
- (1) The failure of the property owner to initiate and prosecute with effect eviction proceedings following notification by the City that the terms of the crime-free housing lease addendum have been violated; or
 - (2) The failure of the property owner and/or property manager to attend the required crime free housing seminar.

§ 314-3. Powers and duties of City Manager.

The City Manager and/or his/her designee shall:

- A. Collect all license fees, issue licenses and maintain all license records in the name of the City to all qualified persons.
- B. Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this article.
- C. Adopt all forms and prescribe the information to be given therein as to character and other relevant matter for all necessary papers.
- D. Require applicants to submit all affidavits and oaths necessary to the administration of this article.

- E. Submit all applications, in a proper case, to interested City officials for their endorsements thereon as to compliance by the applicant with all City articles which they have the duty of enforcing.
- F. Investigate and determine the eligibility of any applicant for a license pursuant to this article, if required.
- G. Notify any applicant of the acceptance or rejection of his/her application and, upon the refusal of any license or permit and at the applicant's request, state in writing the reasons therefor and deliver them to the applicant.
- H. Keep all information furnished or secured under the authority of this article in strict confidence. The information shall not be subject to public inspection and shall be kept so that its contents shall not become known except to the persons charged with the administration of this article.

§ 314-4. Receipt for payment of license fees.

Whenever a license cannot be issued at the time the application for it is made, the City Manager and/or his/her designee shall issue a receipt to the applicant for the money paid in advance. The receipt shall not be construed as the approval of the City Manager and/or his/her designee for the issuance of a license, nor shall it entitle or authorize the applicant to rent or offer to rent any apartment, house, or other dwelling unit contrary to the provisions of this article.

§ 314-5. License application.

- A. Every applicant for a license under the provisions of this article shall make an application for such license upon forms provided by the City Manager and/or his/her designee which shall include the following information:
 - (1) The name and business address of the licensee.
 - (2) A statement that the applicant has complied and will continue to comply with all the ordinances of the City. The application shall be verified by the oath or affirmation of the individual licensee or of one member of a partnership, firm or association, or of the president, secretary or a director of a corporation applying for a license.
 - (3) Such other information as the City Manager and/or his/her designee deems necessary.^[1]
- [1] *Editor's Note: Former Subsection (b), requiring a sworn affidavit for license applications, which immediately followed this subsection, was deleted 12-15-2008 by Ord. No. 08-07.*
- B. The proper license fee shall accompany the application.

§ 314-6. Issuance, expiration and form.

[Amended 11-19-2012 by Ord. No. 12-25]

- A. Upon proper application, payment of the prescribed fee, and satisfactory rental unit inspection, a license shall be issued to each such applicant, signed by the City Manager and/or his/her designee. Each such license shall be valid and effective from the first day of January of each year, or the date of issuance, to the last day of December of the same year. A record of all licenses issued and licensee fees paid shall be maintained at the City Hall.

[Amended 6-2-2014 by Ord. No. 14-11]

- B. Each such license shall be upon a form provided by the City Manager, and/or his/her designee, which shall set forth the following information:
- (1) The name and business address of the licensee;
 - (2) The date of issuance of the license;
 - (3) The amount of the license fee paid to the City.^[1]

[1] *Editor's Note: Former Subsection C, regarding issuances of licenses in 2013, which immediately followed this subsection, was repealed 6-2-2014 by Ord. No. 14-11.*

§ 314-7. Denial of license.

- A. The City Manager and/or his/her designee shall, upon disapproving any application submitted under the provisions of this article, refund all fees paid in advance by the applicant pursuant to the application, less a reasonable application processing charge, provided the applicant is not otherwise indebted to the City, in which case the fees shall be applied to the City-owned debts.
- B. When the issuance of a license is denied and any action is instituted by the applicant to compel its issuance, the applicant shall not rent or offer to rent any apartment, house, or other dwelling unit for which the license was refused unless a license is issued to him/her pursuant to a judgment ordering it.

§ 314-8. Penalty for failure to obtain license.

[Amended 6-2-2014 by Ord. No. 14-11]

If the license fee is not paid within 30 days of being due, the owner shall be in violation of this chapter. If the inspection is not scheduled to be completed within 90 days of submitting an application for a rental license, the owner shall be in violation of this chapter. The owner shall be assessed a fine as set forth in Chapter **180**, Municipal Fees, for each month the rental property remains occupied by a tenant without a license.

§ 314-9. Collection of fees; additional remedies.

- A. The amount of any unpaid fee, the payment of which is required pursuant to this article, shall constitute a debt due the City.
- B. The City Solicitor shall, at the direction of the City Manager and/or his/her designee, institute civil suit in the name of the City to recover any unpaid fee.
- C. No civil judgment or any act by the City Solicitor, the City Manager and/or his/her designee or the violating licensee shall bar or prevent a criminal prosecution for each violation of this article.

§ 314-10. Separate license for each rental unit.

A license shall be obtained in the manner prescribed in this article for each apartment, house, or other dwelling unit.

§ 314-11. Duplicate licenses.

[Amended 12-15-2008 by Ord. No. 08-07]

A duplicate license or special permit shall be issued by the City Manager and/or his/her designee to replace any license previously issued which has been lost, stolen, defaced or destroyed without any willful conduct on the part of the licensee, upon the filing by the licensee of an affidavit sworn to before a notary public of this state attesting to that fact and payment to the City Manager of a fee as set forth in Chapter **180**, Municipal Fees.

§ 314-12. Liability of corporate officers and partnerships.

The individuals composing any partnership, firm or association and the president and directors of any corporation, and each of them, shall be personally liable for the license fees herein prescribed for such partnership, firm, association or corporation and subject to prosecution for the renting or offering to rent of any apartment, house, or other dwelling unit by such partnership, firm, association or corporation in the City without the license herein required.

§ 314-13. Renewal.

- A. The applicant for the renewal of a license shall submit an application for that license to the City Manager and/or his/her designee.
- B. The application shall:
 - (1) Be a written statement upon forms provided by the City Manager and/or his/her designee; the form shall include an affirmation by the applicant.
[Amended 11-19-2012 by Ord. No. 12-25]
 - (2) Require the disclosure of any information concerning the applicant's demeanor and the conduct and operation of the applicant's business during the preceding licensing period as is reasonably necessary to the determination by the City Manager and/or his/her designee of the applicant's eligibility for a renewal license and to a possible adjustment of the license fee.

§ 314-14. Transfers.

Each license granted under this article shall be for the sole use and benefit of the person to whom it is issued and shall not be transferable. In case of the death of any individual licensee, his/her personal representative shall succeed to all rights thereunder until the expiration of the license.

§ 314-15. Display.

Every person holding a license issued pursuant hereto shall expose such license in a conspicuous manner in the principal office of his/her place of business.

§ 314-16. General standards of conduct by licensee.

Every licensee under this article shall:

- A. Ascertain and at all times comply with all laws and regulations applicable to the licensed business.
- B. Avoid all forbidden, improper, or other practices or conditions which do or may affect the public health, morals or welfare. Comply with all property maintenance, zoning, and other codes.
[Amended 11-19-2012 by Ord. No. 12-25]
- C. Refrain from renting or offering to rent any apartment, house, or other dwelling unit after expiration of his/her license and during the period his/her license is revoked or suspended.

§ 314-17. Inspections.

- A. The City Manager and/or the designee shall make or have made all investigations reasonably necessary to the enforcement of this article.
[Amended 11-19-2012 by Ord. No. 12-25]
- B. The City Manager and/or his/her designee shall have the authority to order the inspection of licensee's rental units by all City officials having duties to perform with reference to the licensees or rental units. Such City official shall notify a licensee of an intended inspection at least 10 calendar days prior to the inspection unless the tenant has requested the inspection or there exists an urgent issue concerning health or safety. Upon request of the City Manager, and/or his/her designee, the owner of the rental unit, or his/her authorized rental agent, must be present at the time of the inspection.
[Amended 11-19-2012 by Ord. No. 12-25]
- C. All rental units shall be inspected annually.
[Amended 6-2-2014 by Ord. No. 14-11]
- D. Persons inspecting licensee's rental units shall report all violations of this article to the City Manager and/or his/her designee and shall submit any other reports that the City Manager and/or his/her designee shall order.
- E. Inspections must be scheduled to be completed by the owner of the rental unit, and/or his/her authorized rental agent, with the City Manager, and/or his/her designee, within 90 days of submitting an application for a rental license or the rental license will not be issued and the owner of the rental unit shall be fined as established in Chapter **18o**, Municipal Fees.
[Added 11-19-2012 by Ord. No. 12-25; 6-2-2014 by Ord. No. 14-11]

§ 314-18. Provisional orders.

- A. Generally.
 - (1) When a City inspector has reported a violation of any article by a holder of a license or any of his/her employees, the City Manager and/or his/her designee shall issue a provisional order to the licensee.

- (2) The provisional order shall require compliance within five days of service on the affected person.
- B. Hearing on provisional order. Upon written request by a person served with a provisional order pursuant to the provisions of this article, the City Manager and/or his/her designee shall hold a hearing on the alleged violation; a notice of hearing shall be served in the manner required herein.
- C. Service of notices and orders. Provisional orders and all other notices issued pursuant to this article shall be in writing, shall be personally served and shall apprise the licensee of his/her specific violations. In the absence of the licensee or his/her agent or employee, a copy of the notice shall be affixed to some structure on the premises. Should any other permitted method of service of notice fail, then sending the notice to the affected person's last known address shall constitute service.
- D. Authority of City Manager and/or his/her designee to modify orders. Upon written application or on his/her own motion, the City Manager and/or his/her designee shall have the authority, in a proper case, to extend the time for compliance, to grant a new hearing date and to change, modify or rescind any recommendation or order.
- E. The City Manager, and/or his/her designee, shall reinspect the rental unit of any licensee issued a provisional order after the rental unit is brought into compliance. The fee for this reinspection is established in Chapter **18o**, Municipal Fees.
[Added 11-19-2012 by Ord. No. 12-25]

§ 314-19. Final order.

- A. Upon the failure or refusal of the licensee to comply with the provisional order or with any order made after an opportunity for a hearing pursuant to this article, the City Manager and/or his/her designee shall make the provisional order final.
- B. The City Manager and/or his/her designee shall have the authority to suspend or revoke a license upon making and declaring a provisional order final.
- C. Upon revocation or suspension, no refund of any portion of the license fee shall be made to the licensee, and he/she shall immediately cease renting or offering to rent any apartment, house, or other dwelling unit in the City.

§ 314-20. Summary action.

- A. When the conduct of any licensee, agent or employee is so inimicable to the public health, safety and general welfare as to constitute a nuisance and thus give rise to an emergency, the City Manager and/or his/her designee shall have the authority to summarily order the rental unit vacated and suspend the license.
- B. Unless waived in writing within 10 days after he/she has acted summarily, the City Manager and/or his/her designee shall conduct a special hearing for the action in respect to the summary order as may be therein determined. Notice of the hearing shall be given the affected person in the manner prescribed herein.

§ 314-21. Appeals.

- A. Any person aggrieved by any decision of the City Manager and/or his/her designee after a hearing conducted pursuant to this article shall have the right

to appeal to the City Council by filing a written appeal with the City Council within 30 days following the effective date of the action or decision complained of. The appeal shall set out a copy of the order or decision appealed from and shall include a statement of the facts relied upon to avoid the order.

- B. The City Council shall fix a time and place for hearing the appeal and shall serve a written notice upon the person requesting the appeal, informing such person of the hearing. The City Council shall also give notice to the City Manager and/or his/her designee, who shall be entitled to appear and defend the order. The findings of the City Council shall be final and conclusive and shall be served upon the person who requested the appeal.

Town of Smyrna

ARTICLE XI. - RENTAL PROPERTIES

Sec. 18-401. - Definitions.

For the purposes of this article XI, the following words shall be defined as follows:

Directly related to the owner. Any person who is related by blood or marriage (i.e. "in-laws") to the following degrees of kinship: husband, wife, father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, uncle, aunt, niece, nephew.

Dwelling unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

Rental unit. Any dwelling unit which is required to obtain a rental license under the terms of this article.

Sec. 18-402. - Rental license required; exceptions; application and fee.

- (a) No dwelling unit may be leased, subleased, or occupied by any person other than the owner until a rental license has been issued by the town.
- (b) Exceptions.
 - (1) No rental license shall be required where the owner occupies the dwelling unit;
 - (2) No fee shall be charged if the occupant provides written verification that they are directly related to the owner.
- (c) Application. Application for a rental license shall be on forms provided by the town and signed by at least one co-owner of the subject property. Such forms shall require, among other information:
 - (1) The name, address and telephone number of each owner;
 - (2) The address of the unit(s);
 - (3) The maximum occupancy of each unit which shall not exceed the maximum allowed by town ordinance;
 - (4) The name, address, and telephone number of the "caretaker" and "alternate caretaker" as required under section 18-406
 - (5) Certification that the owner will provide the tenant(s)/occupant(s) with written notice of the conditions of the occupancy agreement required by section 18-404
- (d) Fee. The annual fee for a rental license shall be as set forth in the fee schedule per unit per calendar year, payable in advance at time of application. Rental license fees are payable by the first day of each calendar year. Licenses applied for and paid for in December of any year shall be issued for the following calendar year.

Sec. 18-403. - Rental certificate of occupancy; inspections; exceptions; fee.

- (a) *Rental certificate of occupancy required before re-occupancy.* No rental unit shall be occupied after a vacancy by any person other than the owner or persons related directly to the owner unless a rental certificate of occupancy has been issued by the town as herein provided.

- (b) *Inspection; rental certificate of occupancy.* No rental certificate of occupancy shall be issued until an inspection shall have been conducted by the town to insure that the dwelling unit is in substantial compliance with the building, plumbing, housing, electrical, fire, and property maintenance codes of the town. After notification of vacancy by the owner, the town will conduct the inspection within five working days. A rental unit shall be deemed to be not in substantial compliance if:
- (1) There are one or more violations which pose a serious and substantial threat to the health, safety or welfare of the occupants; or
 - (2) There is an extensive number of minor violations which, cumulatively, pose a significant threat to the health, safety, welfare or morale of the occupants.

It is the intent of this article, and the code enforcement official shall be guided accordingly, that the greater the cumulative number of violations observed in a rental unit, the less serious any of them must be to result in a determination that a unit is not in substantial compliance; and conversely, the more serious the violations, the fewer there need be to result in a determination that a rental unit is not in substantial compliance.

- (c) *Exceptions.* No rental certificate of occupancy and no inspection shall be required for any of the following:
- (1) Any rental unit occupied by the owner or by persons directly related to the owner;
 - (2) Any rental unit for which a certificate of occupancy has been issued within the past 12 months following construction or substantial reconstruction of such rental unit;

Provided however, anything in this article to the contrary notwithstanding, where any dwelling unit otherwise excepted from the requirement of a rental certificate of occupancy and inspection is determined to be in significant violation of any town building, housing, electrical, plumbing, fire or property maintenance code, such dwelling unit shall not thereafter be reoccupied after the first vacancy following such determination until a rental certificate of occupancy shall be issued following an inspection as provided herein. "Significant violation" for purposes hereof shall mean violations which because of their seriousness or because of their extensive number, in the aggregate, pose a significant threat to the health, safety, welfare or morale of the occupants.

- (d) *Inspection fee.* The fee shall be \$35.00 for the inspection prior to issuance of a rental certificate of occupancy.

When an inspection is scheduled with the town, it is the responsibility of the property owner to make sure the structure/property is ready by the time the inspector arrives on site. A minimum of one-hour's notice is required to cancel or reschedule an inspection. All inspections require 24 [hours'] advance notice.

If an inspector arrives on-site and the structure/property is not ready and the inspection was not cancelled at least one hour in advance, a \$50.00 fee must be paid at the town hall before the inspection may be rescheduled. An additional fee of \$50.00 shall be charged for each follow-up inspection required because of uncompleted or unsatisfactorily completed items found by the inspector on a previous inspection.

Sec. 18-404. - Conditions of lease or occupancy agreement.

- (a) Any agreement (written or oral) for occupancy of a rental unit shall be subject to the condition, which shall be incorporated into and made a material provision of the occupancy agreement, that the occupancy agreement shall be terminated by the owner for any of the following:
- (1) Occupancy by more persons than permitted under the Housing Code of the Town of Smyrna.
 - (2) Two convictions of any occupant and/or user for violation of section 42-107(d) of the Smyrna Town Code. ("Disorderly dwelling unit—Unlawful acts by occupants and/or users") for violations occurring within any three-consecutive month period.
 - (3) Engaging in any use prohibited by the zoning code of the town after written notice of such violation from the town;

- (4) Using or permitting the use of the rental unit or common areas thereof for purposes of prostitution, gambling and/or any drug offense in violation of applicable state statute.
- (b) In order to facilitate compliance with this section, copies of a suitable notice form shall be provided to owners by the town and shall be provided by the owner to the occupant(s) at or prior to the time of entering into such occupancy agreement. Such notice be filled out in triplicate, with one copy being filed with the town by the owner. Such notice shall specify the maximum number of occupants permitted in the rental unit and the names and ages of the occupants. Failure of the owner to provide the occupants with a copy of such notice, failure of the owner to obtain the names and ages of the occupants, and/or failure to file a completed copy of such notice with the town hall shall constitute a violation of this article. Such information shall be deemed to be confidential information not available for public inspection.

Sec. 18-405. - Owners duty to terminate lease and commence proceedings for summary possession; revocation of rental license for failure to do so.

- (a) Any violation of the conditions of occupancy established by section 18-404(a) is hereby declared to be a "material breach of an obligation imposed upon tenants" by the Code of the Town of Smyrna in accordance with 25 Del. C. Section 5513(a)(3) or any future corresponding provision of law.
- (b) Whenever an owner receives written notice from the town of a breach of any of the conditions set out in section 18-404(a), the owner shall, within three business days, initiate and diligently and in good faith pursue all necessary steps and procedures required by 25 Del. C. Part III ("Residential Landlord/Tenant Code") to obtain an order of summary possession. The owner shall provide the town copies of all required letters, notices, and court documents, contemporaneously upon the mailing, filing, or receipt of same by the owner so as to allow the town to monitor the progress of such efforts by the owner.
- (c) Failure of the owner to initiate and diligently pursue such steps in a timely manner shall constitute a violation of this ordinance and shall also authorize the town to revoke the owners rental license for a period of not less than one month and not more than one year; provided, however, that no rental license shall be revoked for violation hereunder unless the owner shall have been given prior written warning by the town of such intention to revoke, stating the grounds therefore, and the owner shall not have corrected such violation or appealed such decision to the town manager within three working days of such notice.
- (d) Notice of a breach of the conditions imposed by section 18-404(a), and notice of a violation under section 18-405(c) shall be given to the owner by any of the following:
 - (1) Certified mail, return receipt requested addressed to the owners address as provided by the owner on the application for rental license; provided however, that notice shall be deemed complete if the notice is returned marked "refused". If such notice is returned marked "unclaimed", the town shall publish notice once in a newspaper of general circulation in the county.
 - (2) Facsimile transmission ("fax") to a tax telephone number provided to the town by the owner;
 - (3) Personal delivery to the owner or to the owners agent or by leaving a copy thereof at the owners usual place of abode in the presence of some person residing there of suitable age and discretion who shall be informed of the contents thereof.

Sec. 18-406. - Caretaker and alternate.

Every rental unit shall have a "caretaker" and "alternate caretaker" designated by the owner. The caretaker and alternate caretaker shall each be adult persons, specifically identified in writing by the owner on the rental license application (stating their name, address and telephone numbers) who reside in such proximity to the town as to allow them to meet with the code enforcement official at the rental unit within 24 hours of receipt of notice from the code enforcement official.

The caretaker and alternate caretaker shall be persons charged, by the owner, with responsibility and authority to deal with occupants of the premises on behalf of the owner, to make repairs to the rental unit, to maintain the premises and the common areas thereof, and to accept service of process on behalf of the owner.

The owner shall notify the town in writing of any changes in the name, address, and/or telephone number of the caretaker or alternate caretaker. Failure to do so shall constitute a violation of this article.

Sec. 18-407. - Penalties; enforcement remedies.

(a) *Penalties.*

(1) *Owners.* Any owner who shall violate any section of this chapter shall, upon conviction, be subject to a fine of not less than \$100.00 nor more than \$500.00 plus court costs and victim's compensation fund assessment, where applicable. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(2) *Occupants.* Any tenant, lessee, sub-lessee, or other person occupying or in possession of a rental unit in violation of section 18-402 and/or section 18-403 who shall fail to comply with a notice and order to vacate as provided in subparagraph (b) of this section shall, upon conviction, be subject to a fine of not less than \$100.00 and not more than \$500.00 plus court costs and victim's compensation fund assessment, where applicable. Each day of a continuing violation shall constitute a separate offense.

(b) *Notice and order to vacate; appeal.* Whenever the code enforcement constable determines that a rental unit has been occupied in violation of section 18-402 and/or section 18-403 of this Code, he/she may provide the occupant(s) of such rental unit with a written notice and order to vacate, substantially in the form attached to the ordinance from which this section derives as "exhibit A," ordering the occupant(s)/person(s) in possession of such rental unit to vacate the rental unit within 60 days unless the town subsequently provides such person(s) with notice that such violations has/have been corrected. A copy of such notice shall be sent, certified mail, return receipt requested, to the owner(s) at the owner's last known address as shown on the town's assessment records unless the owner has provided the town with written notice of another preferred address.

Any person subject to a notice and order to vacate under this subparagraph (b) and any owner of such unit shall have a right of appeal to the town manager within 15 days of the date of the notice and order on the limited issue of whether or not the rental unit is in violation of section 18-402 and/or section 18-403.

(c) *Termination of town utilities.* In addition to or in lieu of seeking the imposition of civil penalties against the occupants under paragraph (a) hereof, the town may enforce compliance with this ordinance by terminating electric, water, and/or sanitary sewer service to the rental unit where any occupants has/have failed to comply with a notice and order to vacate as herein provided.

Sec. 18-408. - Conflict with state or federal laws or regulations.

Whenever any provision of this article is in irreconcilable conflict with any provision of state or federal law or regulations adopted pursuant thereto, the provisions of the federal or state law or regulations shall control and supersede the provisions of this article.

Secs. 18-409—18-500. - Reserved.

Chapter 180 - RESIDENTIAL RENTAL OPERATING LICENSES

§ 180-1. - Title.

This chapter shall be known as the "Residential Rental Operating License Ordinance."

§ 180-2. - Purpose.

This chapter is adopted to protect the health, safety and welfare of the City residents and to prevent deterioration of the housing stock in the City.

§ 180-3. - Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein:

CITY — The City of Milford, Delaware.

CODE OFFICIAL — The Building Inspector and/or Code Enforcement Official.

LANDLORD — A person and/or an authorized representative, heir, successor or assignee of a person who leases or otherwise permits another person to occupy a rental unit for money or other consideration.

PERSON — An individual, proprietorship, partnership, corporation, association, or other legal entity.

RENTAL UNIT — — Any house, building, structure or portion thereof, which is occupied, rented or leased as the home or residence of one or more persons. "Rental unit" does not include motel, hotel or bed-and-breakfast rooms where paying guests stay on a temporary basis. "Rental unit" also does not include rehabilitation or mental health group homes where residents may pay rent but the home is managed and owned by nonprofit entities for the benefit of the renters' special needs.

TENANT — A person who occupies a rental unit for which said person pays money or gives other consideration.

§ 180-4. - Rental operating license required.

No landlord shall operate a rental unit in the City unless an application has been filed and a current rental operating license has been issued for the specified rental unit for the current year.

§ 180-5. - Application for rental operating license and agreement to comply.

- A. Every landlord shall apply for a rental operating license and shall agree to comply with all provisions of this and any other applicable City ordinance.
- B. The application shall be in the form provided by the Code Enforcement Department and shall be accompanied by a check or money order payable to the City of Milford in the amount set forth by City Council.
- C. It shall be unlawful for any person to operate any rental dwelling without obtaining a license from the ~~Licensing Division of the Department of Planning and Inspections~~ Enforcement and Inspections Department in order to determine compliance. The license shall expire annually on December 31. The fee for the annual license shall be ~~\$50 for each unit.~~ **set from time to time by resolution of City Council and maintained by the City's Clerk's office.**

- D. In the event that the license fee set forth herein is not paid on the date due, then the licensee shall incur a penalty fee in the amount of \$25 per month per unit until the license fee is paid.
- E. An owner whose license has been suspended shall pay a reinstatement fee of \$100.
- F. The owner or occupant of any rental shall not be entitled to receive utilities until the license fee required is paid in full, and City personnel shall refuse to provide sewage, water and electric to the property until satisfactory proof is furnished that such fee has been paid.

§ 180-6. - Contents of applications.

Every landlord shall supply the following information to the City as part of the annual application for a rental operating license and agreement to comply:

- A. The mailing and street address of the rental units.
- B. Name of responsible party leasing the unit and telephone number at time of application.
- C. ~~The total number of persons living in the rental unit at time of application.~~ The maximum occupancy of each unit which shall not exceed the maximum allowed by City ordinance and State Code.
- D. Landlord's name, mailing address and telephone number.
- E. Certification that the owner will provide the tenant(s)/occupant(s) with written notice of the conditions of the occupancy agreement required by section 180-7.

§ 180-7. – Conditions of lease or occupancy agreement.

- A. Any agreement (written or oral) for occupancy of a rental unit shall be subject to the condition, which shall be incorporated into and made a material provision of the occupancy agreement, that the occupancy agreement shall be terminated by the Owner for any of the following:
 - (1) Occupancy by more persons than permitted under City Code and 31 Del. C. Section 4106 and section 4115.
 - (2) Engaging in any use prohibited by the zoning code of the City after written notice of such violation from the City.
 - (3) Using or permitting the use of the rental unit or common areas thereof for purposes of prostitution, gambling and/or any drug offenses in violation of applicable state statute.
- B. In order to facilitate compliance with this section, copies of a suitable notice form shall be provided to owners by the City and shall be provided by the owner to the occupant(s) at or prior to the time of entering into such occupancy agreement. Such notice be filled out in triplicate, with one copy being filed with the City by the owner. Such notice shall specify the maximum number of occupants permitted in the rental unit and the names and ages of the occupants. Failure of the owner to provide the occupants with a copy of such notice, failure of the owner to obtain the names and ages of the occupants, and/or failure to file a completed copy of such notice with the City shall constitute a violation of this article. Such information shall be deemed to be confidential information not available for public inspection.

§ 180-8. – Owners duty to terminate lease and commence proceedings for summary possession; revocation of rental license for failure to do so.

- A. Any violation of the conditions of occupancy established by section 180-7(a) is hereby declared to be a "material breach of an obligation imposed upon tenants" by the Code of the City of Milford in accordance with 25 Del. C. Section 5513(a)(3) or any future corresponding provision of law.

- B. Whenever an owner receives written notice from the City of a breach of any of the conditions set out in section 180-7(a), the owner shall, within three business days, initiate and diligently and in good faith pursue all necessary steps and procedures required by 25 Del. C. Part III ("Residential Landlord/Tenant Code") to obtain an order of summary possession. The owner shall provide the City copies of all required letters, notices, and court documents, contemporaneously upon the mailing, filing, or receipt of same by the owner so as to allow the City to monitor the progress of such efforts by the owner.
- C. Failure of the owner to initiate and diligently pursue such steps in a timely manner shall constitute a violation of this ordinance and shall also authorize the City to revoke the owners rental license for a period of not less than one month and not more than one year; provided, however, that no rental license shall be revoked for violation hereunder unless the owner shall have been given prior written warning by the City of such intention to revoke, stating the grounds therefore, and the owner shall not have corrected such violation or appealed such decision to the City Manager within three working days of such notice.
- D. Notice of a breach of the conditions imposed by section 180-7(a), and notice of a violation under section 180-8(c) shall be given to the owner by any of the following:
 - (1) Certified mail, return receipt requested addressed to the owners address as provided by the owner on the application for rental license; provided however, that notice shall be deemed complete if the notice is returned marked "refused". If such notice is returned marked "unclaimed", the City shall publish notice once in a newspaper of general circulation in the county.
 - (2) Facsimile transmission ("fax") to a tax telephone number provided to the City by the owner;
 - (3) Personal delivery to the owner or to the owners agent or by leaving a copy thereof at the owners usual place of abode in the presence of some person residing there of suitable age and discretion who shall be informed of the contents thereof.

§ 180-79. - Regulations for issuance of licenses.

- A. If violations are found that pose a health or safety risk to the tenants, the unit may be judged as unfit for occupancy by the Code Official.
- B. Expiration of permits. Each rental operating license shall expire on December 31 of the year in which it was issued. No prorating, rebate or refund shall be made because of nonuse of the permit.
- C. Timing for reapplication.
 - (1) Application to renew a rental operating license shall be made at least 60 days prior to the expiration date of the current license.
 - (2) When reapplication is made fewer than 30 days before the expiration date, the pendency of the application will not prevent the expiration of the license.
- D. Every rental unit owned shall have a "caretaker" designated by the owner.
 - (1) The caretaker may be the property owner if residing within a ten-mile radius of Milford, Delaware.
 - (2) The caretaker shall be an adult person(s) 18 years or older, specifically identified in writing by the owner on the rental license application (stating name, address and telephone numbers) and reside in such proximity to the City as to allow him or her to meet with the Code Enforcement Official at the rental unit within 48 hours of receipt of notice from the Code Enforcement Official. The caretaker may also be a management company (corporation, LLC and/or partnership); however, the management company must assign a contact person.

- (3) The caretaker shall be charged, by the owner, with responsibility and authority to deal with occupants of the premises on behalf of the owner, to make repairs to the rental unit, to maintain the premises and the common areas thereof, and to accept service of process on behalf of the owner.
 - (4) Once notified of a defective condition and unless circumstances are beyond the caretaker's control, the caretaker will be given an amount of time to make repairs as deemed reasonable by the Code Official.
 - (5) The owner shall notify the City in writing of any changes in the name, address, and/or telephone number of the caretaker.
- E. No license shall be issued to any person or business unless all taxes, assessments, sewer, water, electric, trash charges and any other fees due the City are paid and in good standing.
- F. The owner is subject to penalties as defined in § 180-9 for failure to comply.

§ 180-8~~10~~¹⁰. - Inspections.

- A. The Code Enforcement Official reserves the right to inspect property at any time to ensure compliance with all Property Maintenance (Chapter 174), Zoning (Chapter 230) and other codes.
- B. When such inspections are deemed necessary, the Code Enforcement Official will provide 48 hours' notice to the owner or caretaker. Exceptions to this rule will apply when health or safety conditions exist that require immediate inspection.
- C. A rental unit shall be deemed to be not in substantial compliance if:
 - (1) There are one or more violations that pose a serious and substantial threat to the health, safety or welfare of the occupants.
 - (2) There are an extensive number of minor violations that, cumulatively, pose a significant threat to the health, safety, and welfare of the occupants.
- D. When the Code Enforcement Official schedules an inspection, it is the responsibility of the property owner to make sure the structure/property is ready by the time the inspector arrives on site.
 - (1) If an inspection needs to be cancelled or rescheduled, the Code Enforcement Official must be notified by 8:30 a.m. the day of the inspection.
 - (2) If an inspector arrives on site and the structure/property is not ready and the inspection was not cancelled or rescheduled, a fee of \$100 must be paid at City Hall before the inspection can be rescheduled. This fee may be waived if the property is not ready for inspection due to circumstances beyond the control of the landlord/caretaker.
- E. When conditions of a property are such that cause more than one follow-up inspection, for the purpose of ensuring compliance, a fee of \$50 per inspection will be imposed.

§ 180-9~~11~~¹¹. - Violations and penalties; enforcement.

- A. Penalty for violation.
 - (1) Any property owner who shall violate any provisions of this chapter or who fails to comply with any notice or order issued by a Code Enforcement Official pursuant to the provisions of this chapter shall be guilty of violating the provisions of this chapter and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000. The minimum fine is not subject to suspension or reduction.
 - (2) Except where an appeal is taken, each day of a separate and continuing violation shall be deemed a separate offense.

- B. Should the aforesaid penalties not be paid within 30 days of being assessed, and after notice of said failure is served, then the property covered by this chapter will be assessed for the unpaid penalties, which shall be collected in the same manner and at the same time as City taxes.
- C. If any of the cited violations are not remedied, the Code Enforcement Official shall revoke the residential rental operating license.
- D. The remedies contained within this section shall further not be exclusive, but shall be in addition to any other remedy provided by law, so long as not inconsistent herewith, nor shall the invoking of any remedy or procedure contained within this section preclude the pursuit of any and all other remedies, and the same are intended to be cumulative.

§ 180-12. - Conflict with State or federal laws or regulations.

Whenever any provision of this article is in irreconcilable conflict with any provision of state or federal law or regulations adopted pursuant thereto, the provisions of the federal or state law or regulations shall control and supersede the provisions of this article.

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WHEREAS, in the opinion of the City Council of the City of Milford, in order to protect the public health, safety, and welfare, it is in the best interest of the public to require a license to operate businesses and professional services in the City of Milford; and

WHEREAS, the City of Milford will experience direct and indirect costs associated with administering the licensing registrations, making it necessary and reasonable for the City of Milford to impose a fee associated with the issuance of business license and the enforcement of those regulations outlined herein.

NOW THEREFORE, BE IT HEREBY ENACTED by the City Council of the City of Milford, a majority thereof concurring in Council duly met, that the City Code of the City of Milford be and hereby is amended as follows:

Section 1. Amend the City Code of the City of Milford by creating a new Chapter XX – Business Licenses as follows:

Chapter XX. BUSINESS LICENSES

Sec. XX-1. Purpose.

The City Council declares that it is necessary to issue business licenses and establish procedures governing the issuance of business licenses in order to identify owners/operators of businesses, track changes in ownership and/or business activity, define the nature of business activities, ensure an understanding of and compliance with City codes governing business operations, provide necessary approval, enforcement, and compliance procedures, and for other public purposes.

Sec. XX-2. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means any person engaged in the sale of goods or services including, but not limited to, any retail, wholesale, service, rental, food service, professional or personal service or other general commercial activity.

Person means any individual, firm, corporation, company, partnership, or joint venture.

Section XX-3. Business licenses required.

- (1) Business licenses required. Commencing January 1, 2017, no person shall operate, maintain or otherwise be engaged in any business within the boundaries of the City of Milford without having first received a business license issued by the City for the calendar year in which the business is operating. All businesses in existence within the boundaries of the City prior to January 1, 2017 shall obtain a business license prior to June 1, 2017, which license shall be valid for the year 2016.
- (2) License period; renewals. Business licenses shall be issued for each calendar year and shall expire December 31 of the year for which the business license was issued, regardless of when

during the calendar year the license was issued. Licenses shall be renewed on or before January 1 of each year.

- (3) Display of business license. The business license shall be displayed in a public place within the establishment or, if applicable, worn or carried by the person providing the service in a manner that is visible at all times to the public.
- (4) Good standing requirements. No license shall be issued to any person or business unless all taxes, assessments, sewer, water, electric, trash charges and other fees due the City are paid and in good standing.
- (5) Multiple business locations. Each separate location or branch of the same business requires a separate business license as though it were a separate business.
- (6) Transferability. A business license may not be transferred from one party to another or from one location to another location of the same business. If the nature of the licensee's business activities substantially changes after the issuance of a business license, a new business license shall be required.

Sec. XX-4. Business license application.

Every application for a business license submitted to the City shall be in writing, verified by oath or affirmation and signed by the applicant(s), and shall include the following information:

- (1) Company/business name;
- (2) Phone number and street address of business (physical location, not post office box);
- (3) The name, title, phone number(s) (home and cellphone), and address(es) of the owner(s);
- (4) Name, cell phone number, and email address of the authorized manager or representative;
- (5) Federal Employer ID# or owner's Social Security number;
- (6) The trade, business or occupation for which the license is being requested;
- (7) Number of regular full time and part time or seasonal employees;
- (8) A copy of any business licenses issued by the State of Delaware and/or any other approvals issued by the Division of Revenue or another governmental or quasi-governmental agency (i.e. ABCC, Administrative Services, Banking Commissioner, Insurance Commissioner, PSC, DNREC, EPA, IRS, etc.). Possession of any such license or approval shall not exempt a person from obtaining a City of Milford business license; and
- (9) A statement that the business has complied with and will continue to comply with all codes and ordinances of the City.

After reviewing the business license application, the City Manager may request such other information as is necessary to answer any questions raised by the application regarding the operation of the business. The City Manager shall prescribe the form of the license certificate and shall keep full and complete records of all licenses issued, the expiration dates, and the license fees collected.

Sec. XX-5. Business license application review.

The City Manager or his/her representative shall investigate and review all applications for a license to do business within the City to determine whether the applicant is aware of and demonstrates a willingness to comply with all codes and ordinances of the City that relate to the business's operation, and agrees to avoid all forbidden, improper or other practices or conditions which do or could adversely affect the public health, safety or welfare.

Sec. XX-6. Business license fees; delinquencies.

The fee for a business license shall be set by the City Manager each year as part of the City Fee Schedule.

The business license fee for any new business applying for a business license after July 1 shall be prorated. No refund shall be given for any business that ceases to operate during the licensing period. In the event that an existing business has not applied for and paid the business license fee on or before the first day of January, a penalty of ten percent (10%) shall be assessed for each month or portion thereof that the license fee remains unpaid. Once penalties have begun to be assessed under section XX-10, however, no additional penalties shall continue to be assessed under this section.

Sec. XX-7. Code compliance; zoning certificate.

A business operating in the City shall at all times be in compliance with all City codes and ordinances. Any business not in existence in the City as of January 1, 2017 shall not be issued its initial business license and shall not initiate its business activities until it has obtained a certificate of zoning compliance ascertaining the permissibility of the proposed business use in the location where such activity is to take place.

Sec. XX-8. Exemptions.

Anything in this chapter to the contrary notwithstanding, the following activities are exempt from the business licensing requirement outlined herein:

- (1) Deliveries of goods or property to a licensed business for use or resale in that business.
- (2) Utility companies otherwise authorized by the City to operate within the City limits.
- (3) Charitable, religious, educational, or public service facility, social association or club, or governmental agency except to the extent that such operate a separate retail facility, provided that any third parties operating on behalf of any such entities shall not be exempted from obtaining a business license.
- (4) Exhibitor in a museum, the Milford Library, an educational facility, or other public building where such exhibition is part of a limited scheduled event or show.
- (5) Yard or garage sales, book sales, and auctions where not part of a regularly recurring or continuous business activity.
- (6) Sale of agricultural or nursery items grown on the premises of the property owner.
- (7) Any activities permitted pursuant to a current peddler's license or otherwise exempt from obtaining a peddler's license as outlined in Chapter 168 ("Peddling, Soliciting and Transient Merchants").
- (8) Construction activities for which a license is required and has been secured in accordance with Chapter 107 ("Contractors").
- (9) Business activities of insurance agents and companies specifically exempted from municipal business license fees under 18 Del. C. § 712.
- (10) Rental activities for which a rental license has been obtained pursuant to Chapter 180 ("Residential Rental Operating Licenses").

Sec. XX-9. Inspection by City officials.

The City Manager and/or his designee shall have the authority to make or have made all inspections and investigations reasonably necessary to enforce this chapter and to inspect those portions of the

commercial premises that are open and visible to the public in order to ensure that the business is being conducted as specified by the license and is in compliance with all applicable building, safety, zoning, and other City codes. All persons authorized by this chapter to inspect businesses shall have the authority to enter the premises to inspect at all reasonable times.

Sec. **XX**-10. Suspension of business license; penalties.

- (1) Suspension of business license. The City Manager may order a business to cease operations in the City and suspend its business license (if a business license has been obtained) for any of the following reasons:
 - a. The business is found to be operating in violation of the terms of this chapter.
 - b. The business is more than 60 days late in renewing its business license.
 - c. The business is in violation of any regulations of the Milford City Code or the laws of Delaware.
 - d. The Fire Marshall or any public safety authority having jurisdiction has requested that the business activities cease until certain conditions have been remedied.

The City shall provide the business with written notice of the violation(s), which notice shall state that the business shall be ordered to cease operations and its business license (if applicable) shall be suspended without further notice if within 10 business days of the date of the notice the business fails to remedy the violations or file an appeal with the City Council. The written notice shall be either personally delivered or sent via certified mail, return receipt requested, to the business. If the business does not remedy the violations or appeal the determination of the City Manager within the prescribed time period, the business shall not be permitted to operate in the City until such violations have been remedied. Notwithstanding the foregoing, notice shall not be required to order a business to cease operations in any emergency situation that causes an immediate threat to the health, safety, or general welfare of the public.

- (2) Penalties. Any business that does not remedy the violations within the prescribed time period shall be assessed a penalty of \$100.00 as of the date the notice of violation was delivered to the business. Each day thereafter that the violation is not remedied shall be considered a new violation subject to a new penalty, provided that no additional notices of violation shall be required. Notwithstanding the foregoing, no penalties shall be assessed if (i) the business remedies the violation(s) within 10 business days of the date the notice of violation was delivered to the business or (ii) the business files an appeal with the City Council that is resolved in favor of the business. The amount of any unpaid penalty, including the unpaid business license fee, shall constitute a debt owed to the City, and the City may institute a civil suit or use any other lawful methods authorized by the City Charter or the laws of Delaware to recover any unpaid fee.

Sec. **XX**-11. Appeals procedures.

The City Council shall provide any business appealing a determination of the City Manager with 15 business days' written notice of the date, time, and place at which the City Council shall sit to hear the business's appeal. Such written notice shall be sent via certified mail, return receipt requested, and the hearing may be held as part of a regularly scheduled City Council meeting. The filing of an appeal shall stay any enforcement action by the City to compel the business to cease operations, and the business shall be permitted to continue to operate until a final decision is rendered by the City Council. If the City Council finds against the business, the business shall have five (5) business days after the decision of the City Council to remedy the violations before the City takes legal action to compel the business to cease

operations. The accrual of daily violations and corresponding penalties shall not be stayed if an appeal is filed, but no penalties shall be assessed if the City Council finds in favor of the business. If the City Council finds against the business, the City Council may waive a portion or all of the accrued penalties if (a) the violations are remedied within five (5) business days following the decision of the City Council and (b) the City Council finds the appeal was filed by the business in good faith.

Section 2. Severability.

The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with City Council's intent.