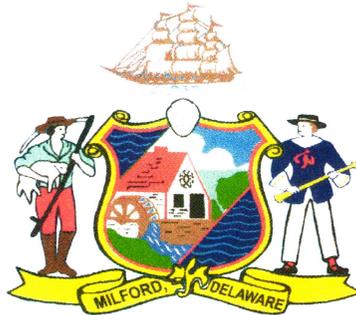


City of Milford



City Council Committee Agenda

Milford City Hall Council Chambers
201 South Walnut Street
Milford, DE 19963

Police & Community Affairs Joint Committee Meeting June 27, 2016 5:30 p.m.

Call to Order - Police Chair James Burk

Proposed Code Amendment/City of Milford Business License/New Chapter

Proposed Code Amendment/Chapter 107/Contractors

Proposed Code Amendment/Chapter 168/Peddling, Soliciting and Transient Merchants Code*

Proposed Code Amendment/Chapter 180/Residential Rental Operating License

Recommendations

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

June 27, 2016

Overview

- ▶ Business Licenses
- ▶ Chapter 107 - Contractors Licenses
- ▶ Chapter 168 - Peddlers, Solicitors and Transient Merchants
- ▶ Chapter 180 - Residential Rental Operating Licenses

Business Licenses

Timing

- ▶ Business Licensing would take effect January 1, 2017.
- ▶ All existing businesses would have until June 1, 2017 to obtain their license for the calendar year.
- ▶ Any new business would need to obtain a business license after January 1, 2017

Business Licenses

Application

- ▶ Name, contact information, FID, copy of State business license and any other State or agency approvals associated with the business.
- ▶ A statement for compliance with all City Codes and Ordinances

Fee

- ▶ Annual fee \$125 to be prorated after July 1 of each year.

Business License

Code Compliance

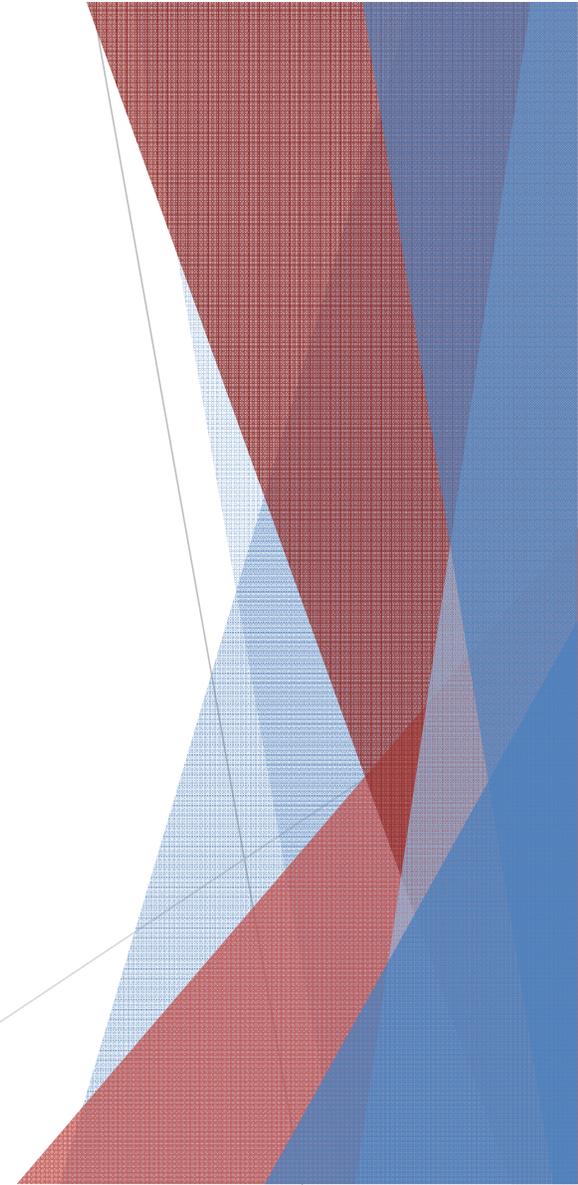
- ▶ require zoning certificate prior to approval.
- ▶ Nonconforming existing businesses

Exemptions

Suspension of License

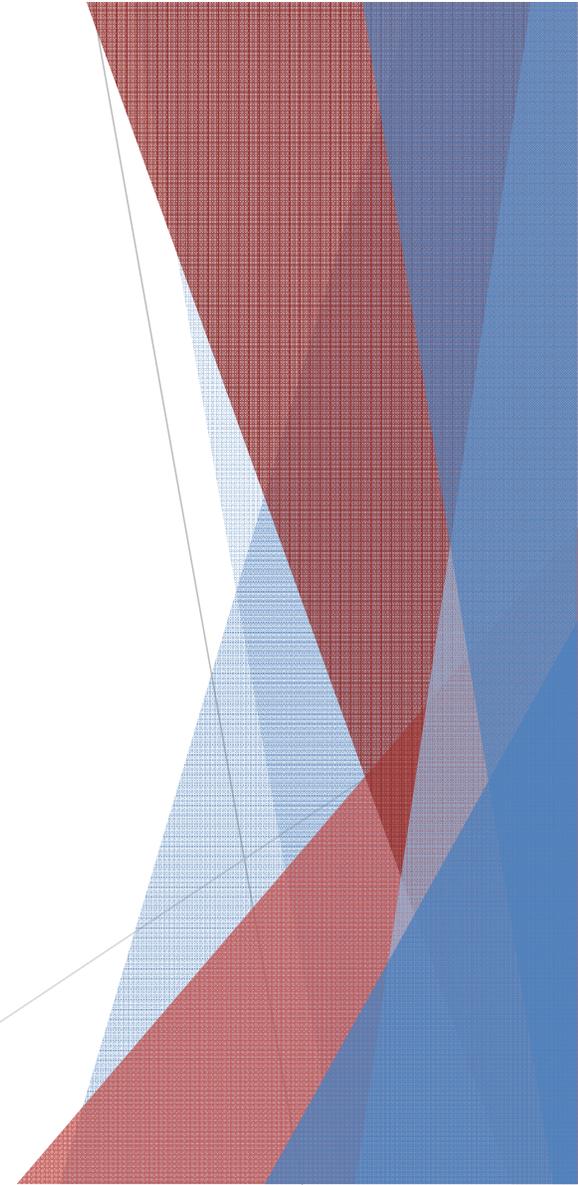
Appeals Procedure

- ▶ City Council, Board of Appeals?



Contractors License

- ▶ Increase annual fee from \$100 to \$125.
- ▶ License fee would be prorated after July 1 of each year.



Peddling, Soliciting and Transient Merchants

- ▶ Increase annual license fee from \$50 to \$125.
- ▶ License fee would be prorated after July 1 of each year.
- ▶ Revisions related to the administration of the ordinance to include food trucks and similar vehicles.
- ▶ Transient merchant definition and restrictions on where transient merchants can operate.
 - ▶ Prohibit operation on residential lots within residentially zoned areas unless the merchant is permitted by the property owner to provide services for a private gathering. No sales to the general public.

Residential Rental Permits

- ▶ 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. Language would need to be developed and incorporated into the draft amendment.
 - ▶ 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.

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

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.

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.

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 2017.
- (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 obtained.

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.

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.

XX-6. Business license fees; delinquencies.

The fee for a business license shall be set by the City Council 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.

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.

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 operates a separate retail facility or other ancillary business that would require 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 and sold seasonally.
- (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").

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.

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 Board of Appeals. 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.

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.

XX-12. 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.

Chapter 107 - CONTRACTORS

[HISTORY: Adopted by the City Council of the City of Milford 1-10-1994. Amendments noted where applicable.]

GENERAL REFERENCES qc

Building construction — See Ch. 88.	Electrical standards — See Ch. 119.
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§ 107-1. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CONTRACTOR — Any person, firm, corporation or jobber engaged in building, alteration, repairing, remodeling, construction and/or maintenance of buildings or engaged in any other type of construction, including but not limited to paving, curbing and sidewalk installation or repair, plumbing, electrical or other types of maintenance or construction.

[Amended 4-10-2006 by Ord. No. 2006-1]

§ 107-2. - Permit required.

No contractor shall operate, maintain or otherwise be engaged in any business as described in § 107-1 without first obtaining a permit from the City Manager or his designated representative (permit officer).

§ 107-3. - Permit application.

- A. Applications for permits shall be upon forms provided by the City which shall include the following information:
- (1) The name and address of the applicant.
 - (2) The trade, business or occupation for which the permit is required.
 - (3) A statement that the applicant is knowledgeable of and has complied with and will continue to comply with all ordinances of the City, including but not limited to the current City of Milford Building, Zoning and Property Maintenance Codes.

[Amended 4-10-2006 by Ord. No. 2006-1]

- (4) Such other information as the City deems necessary.
- B. The application shall be verified by the oath or affirmation of the individual permittee or of one member of a partnership, firm or association or the president, secretary or a director of a corporation applying for a permit.
- C. The proper permit fee shall accompany the application.

§ 107-4. - Issuance of permit; records; payment of fees.

[Amended 4-10-2006 by Ord. No. 2006-1]

Upon proper application and payment of a prescribed fee, a permit, signed by the City Manager or his designated representative (permit officer), shall be issued to each applicant. Each such permit 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 in that year. A record of all permits issued and permit fees paid shall be maintained at the City Hall. Each such permit shall be on a form provided by the City.

§ 107-5. - Denial of permit.

- A. The City Manager or permit officer shall, upon disapproving any application submitted under the provisions of this chapter, refund all fees paid in advance by the applicant pursuant to the application, less a reasonable processing charge.
- B. When the issuance of a permit is denied and any action is instituted by the applicant to compel its issuance, the applicant shall not engage in the business for which the permit was refused unless a permit is issued to him pursuant to a judgment ordering it.

§ 107-6. - Permit fees; refunds; exemptions.

[Amended 4-10-2006 by Ord. No. 2006-1]

- A. The annual permit fee shall be \$100.
 - (1) Permit fees associated with new applications are prorated on a quarterly basis.)
 - (2) The annual renewal fee is \$100.
 - (3) Second renewals are subject to a late fee of \$50.
 - (4) The penalty fee shall be \$100.
- B. No prorationing, rebate or refund of any permit fee or part thereof shall be made by reason of nonuse of the permit or by reason of a change of location or business rendering the use of the permit ineffective. The City Manager or permit officer shall have the authority to refund a permit fee only if the permit fee was collected through an error. All 501(c)(3) nonprofit companies are exempt from permit fees.

§ 107-7. - (Reserved)^u

Footnotes:

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Editor's Note: Former § 107-7, Collection of unpaid fees, was repealed 4-10-2006 by Ord. No. 2006-1.

§ 107-8. - Display of permit.

A permit issued under the provision of this chapter shall be posted in a public place in the establishment or place of business for which it is issued, or it shall be carried upon the person of the permittee.

§ 107-9. - Transfer of permit.

Each permit granted under this chapter 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, his personal representative shall succeed to all rights thereunder until the expiration of the permit.

§ 107-10. - Enforcement; revocation of permit.

- A. The City Manager or permit officer shall make or have made all investigations reasonably necessary to the enforcement of this chapter.
- B. Upon determination that a violation of any City ordinance has occurred or that a permittee is not in compliance with the provisions of this chapter, the City Manager may order a revocation of the permit. Before any permit is revoked, the City Manager shall give 30 days' written notice in advance by certified mail directed to the permittee at the usual place of business, stating the reason for the revocation, and upon the correction of the defect within 30 days following receipt of notice no revocation shall take effect. If the defect is not corrected within said thirty-day period, the permit shall be deemed to be revoked immediately.

§ 107-11. - Appeals.

- A. Any person aggrieved by any decision of the City Manager or permit officer 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 facts relied upon to avoid the order.
- B. The City Council shall fix a time and place for hearing the appeal and shall serve written notice upon the person requesting the appeal informing him of the hearing. The findings of the City Council shall be final and conclusive and shall be served upon the person who requested the appeal.

§ 107-12. - Violations and penalties.

[Amended 4-10-2006 by Ord. No. 2006-1]

- A. Any contractor/person providing services within the City without a valid permit will be subject to penalties as provided for under this section.
- B. A stop-work order will be issued by the Code Official and will stay in effect until the contractor complies with all conditions associated with the issuance of a valid permit, including annual permit and penalty fees.
- C. Continued violation of any provision of this chapter is subject to fines in accordance with Milford City Code Chapter 1, Article II, General Penalty.
- D. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

Chapter 107 - CONTRACTORS

§ 107-1. - Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CONTRACTOR — Any person, firm, corporation or jobber engaged in building, alteration, repairing, remodeling, construction and/or maintenance of buildings or engaged in any other type of construction, including but not limited to paving, curbing and sidewalk installation or repair, plumbing, electrical or other types of maintenance or construction.

§ 107-2. - Permit required.

No contractor shall operate, maintain or otherwise be engaged in any business as described in § 107-1 without first obtaining a permit from the City Manager or his designated representative (permit officer).

§ 107-3. - Permit application.

- A. Applications for permits shall be upon forms provided by the City which shall include the following information:
 - (1) The name and address of the applicant.
 - (2) The trade, business or occupation for which the permit is required.
 - (3) A statement that the applicant is knowledgeable of and has complied with and will continue to comply with all ordinances of the City, including but not limited to the current City of Milford Building, Zoning and Property Maintenance Codes.
 - (4) Such other information as the City deems necessary.
- B. The application shall be verified by the oath or affirmation of the individual permittee or of one member of a partnership, firm or association or the president, secretary or a director of a corporation applying for a permit.
- C. The proper permit fee shall accompany the application.

§ 107-4. - Issuance of permit; records; payment of fees.

Upon proper application and payment of a prescribed fee, a permit, signed by the City Manager or his designated representative (~~permit officer~~), shall be issued to each applicant. Each such permit 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 in that year. A record of all permits issued and permit fees paid shall be maintained at the City Hall. Each such permit shall be on a form provided by the City.

§ 107-5. - Denial of permit.

- A. The City Manager or permit officer shall, upon disapproving any application submitted under the provisions of this chapter, refund all fees paid in advance by the applicant pursuant to the application, less a reasonable processing charge.
- B. When the issuance of a permit is denied and any action is instituted by the applicant to compel its issuance, the applicant shall not engage in the business for which the permit was refused unless a permit is issued to him pursuant to a judgment ordering it.

§ 107-6. - Permit fees; refunds; exemptions.

~~The fee for a contractor license shall be set by the City Council each year as part of the City Fee Schedule. The contractor license fee shall be prorated after July 1 of each year. No refund shall be given for any contractor that ceases to operate during the licensing period.~~

~~A. The annual permit fee shall be \$100.~~

~~(1) Permit fees associated with new applications are prorated on a quarterly basis.)~~

~~(2) The annual renewal fee is \$100.~~

~~(3) Second renewals are subject to a late fee of \$50.~~

~~(4) The penalty fee shall be \$100.~~

~~B. No prorationing, rebate or refund of any permit fee or part thereof shall be made by reason of nonuse of the permit or by reason of a change of location or business rendering the use of the permit ineffective. The City Manager or permit officer shall have the authority to refund a permit fee only if the permit fee was collected through an error. All 501(c)(3) nonprofit companies are exempt from permit fees.~~

§ 107-7. - (Reserved)¹

§ 107-8. - Display of permit.

A permit issued under the provision of this chapter shall be posted in a public place in the establishment or place of business for which it is issued, or it shall be carried upon the person of the permittee.

§ 107-9. - Transfer of permit.

Each permit granted under this chapter 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, his personal representative shall succeed to all rights thereunder until the expiration of the permit.

§ 107-10. - Enforcement; revocation of permit.

A. The City Manager or permit officer shall make or have made all investigations reasonably necessary to the enforcement of this chapter.

B. Upon determination that a violation of any City ordinance has occurred or that a permittee is not in compliance with the provisions of this chapter, the City Manager may order a revocation of the permit. Before any permit is revoked, the City Manager shall give 30 days' written notice in advance by certified mail directed to the permittee at the usual place of business, stating the reason for the revocation, and upon the correction of the defect within 30 days following receipt of notice no revocation shall take effect. If the defect is not corrected within said thirty-day period, the permit shall be deemed to be revoked immediately.

§ 107-11. - Appeals.

A. Any person aggrieved by any decision of the City Manager or permit officer 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 facts relied upon to avoid the order.

B. The City Council shall fix a time and place for hearing the appeal and shall serve written notice upon the person requesting the appeal informing him of the hearing. The findings of the City Council shall be final and conclusive and shall be served upon the person who requested the appeal.

§ 107-12. - Violations and penalties.

- A. Any contractor/person providing services within the City without a valid permit will be subject to a penalty fee of \$100.~~penalties as provided for under this section.~~
- B. A stop-work order will be issued by the Code Official and will stay in effect until the contractor complies with all conditions associated with the issuance of a valid permit, including annual permit and penalty fees.
- C. Continued violation of any provision of this chapter is subject to fines in accordance with Milford City Code Chapter 1, Article II, General Penalty.
- D. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

Chapter 168 - PEDDLING, SOLICITING AND TRANSIENT MERCHANTS

[HISTORY: Adopted by the City Council of the City of Milford 6-25-1963; amended in its entirety 7-28-1997. Subsequent amendments noted where applicable.]

§ 168-1. - Definitions and word usage.

A. As used in this chapter, the following terms shall have the meanings indicated:

PERSON — Any natural person, association, partnership, firm or corporation.

SOLICITING and PEDDLING

- (1) SOLICITING — The seeking or taking of contracts or orders for any goods, wares, merchandise or services for future delivery or for subscriptions or contributions upon any streets or sidewalks or from house to house within the city.
- (2) PEDDLING — The selling or offering for sale of any goods, wares, merchandise or services for immediate delivery which the person selling or offering for sale carries with him in traveling or has in his possession or control upon any of the streets or sidewalks or from house to house within the city.
- (3) Neither the word "soliciting" nor "peddling" shall apply to:
 - (a) Farmers seeking or taking orders for or selling or offering for sale their own produce.
 - (b) The seeking or taking of orders for or the selling or offering for sale of bread or bakery products, meat or meat products or milk and milk products by any manufacturer or producer thereof.

SOLICITOR or PEDDLER — Any person who shall engage in soliciting or peddling, respectively, as hereinabove defined.

TRANSIENT MERCHANT — A person who engages or proposes to engage temporarily in merchandising business in the city and occupies a room, building, tent, vehicle, lot, stand or other premises for the purpose of selling, trading or bartering goods, wares and merchandise.

B. Word usage. The singular shall include the plural.

§ 168-2. - Registration required.

No person shall engage in soliciting or peddling or act as a transient merchant in the city without first registering with the City Code Official.

§ 168-3. - Information to be supplied.

- A. Every person desiring to engage in soliciting or peddling in the city shall first register, under oath, with the Code Official. Upon such application, such person shall give his name, address and age; his previous criminal record, if any; the name and address of the person for whom he works and a letter appended to the application authorizing the applicant to represent the firm the applicant purports to represent, if any; the type or types of article, device, subscription, contribution, service or contract which he desires to sell or for which he wishes to solicit within the city; the length of time he wishes to be registered; the type of vehicle he uses, if any, and its registration number; and the name, address and title of a company officer upon whom process or other legal notice may be served, if the applicant is a corporation or company.
- B. Where a person makes application for himself and one or more helpers, all applicable personal information specified above shall be given for each helper, and an individual license shall be required for each helper. No license issued under this chapter shall be transferable from one person to another.

§ 168-4. - Fees.

No permit or license shall be issued under this chapter except upon payment of a fee of \$50.

§ 168-5. - Issuance of license or permit; list of vendors.

- A. Upon registering with the city as aforesaid, each solicitor or peddler shall be issued a license or permit and may, unless he shall have been convicted of a crime involving moral turpitude, be permitted to solicit or peddle or act as a transient merchant within the city for the licensed period beginning on the date such license or permit is issued and ending on the expiration date thereof. Such license or permit shall not be transferable.
 - (1) No license or permit 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.
- B. Notwithstanding the provisions of Subsection A hereof, the Code Official shall be authorized to delegate the issuance of transient merchant licenses to the owner of any validly existing marketplace for casual retail sales and barter by independent vendors upon condition that said owner shall provide to the Code Official a complete list of vendors to whom licenses were issued.
 - (1) The list required by this subsection shall contain a statement on behalf of said owner as follows: "This list constitutes a complete list of vendors for the reporting period. Each of said vendors was issued a transient merchant license in compliance with the City of Milford Municipal Code."
 - (2) The list shall be provided at least once each month or as required by the Code Official.

[Ord. No. 2011-7, § 2, 4-11-2011]

§ 168-6. - Evidence of registration; display of license; restrictions.

- A. Every solicitor or peddler shall, at all times while engaged in soliciting or peddling in the city, carry evidence of such registration upon his person and shall exhibit such evidence upon request to all police officers, city officials and citizens.
- B. Every person holding a transient merchant license shall post said license in a prominent place in his business premises and shall maintain said license as such at all times.
- C. No solicitor or peddler shall engage in selling or offering for sale or in seeking or taking of orders or contracts for any goods, wares, merchandise, article, device, subscription, contribution, service or contract not mentioned upon such license, nor shall any person use any vehicle for soliciting or peddling other than the vehicle registered upon his license.
- D. No license issued upon the provisions of this chapter may be transferred from one person to another. The person designated in said license shall be the only person authorized to engage in such business thereunder.

§ 168-7. - Hours of sale.

No person shall engage in soliciting or peddling at any time on Sunday or on any other day of the week before 9:00 a.m. or after 5:00 p.m. except upon invitation from or an appointment with the resident.

§ 168-8. - Noise.

No person engaged in soliciting or peddling or as a transient merchant shall hawk or cry his goods, wares, merchandise, articles, contracts or services upon any of the streets or sidewalks of the city, nor shall he use any loudspeaker or horn or any other device on public property for announcing his presence by which members of the public are annoyed.

§ 168-9. - Vehicles.

No person engaged in soliciting or peddling or as a transient merchant shall park any vehicle upon any of the streets or alleys of the city in order to sort, rearrange or clean any of his goods, wares or merchandise or any samples, order books, contracts, circulars, literature or advertising matter pertaining thereto, nor may any such person place or deposit

any refuse upon any such street or curbstone market or soliciting or peddling office by parking any vehicle upon any street or alley in the city for longer than necessary in order to solicit from or peddle to persons residing in the immediate vicinity.

§ 168-10. - Prohibited acts.

- A. No person engaged in soliciting or peddling or acting as a transient merchant shall occupy any of the streets or alleys or sidewalks of the city for the purpose of soliciting or peddling, with or without any stand or counter.
- B. No person engaged in soliciting or peddling shall enter upon premises for the purpose of soliciting or peddling which are posted with signs indicating that soliciting or peddling thereon is prohibited.
- C. No peddler or solicitor shall peddle, vend or sell his goods or wares within 200 feet of any church or place of worship or any place occupied exclusively as a public or private school or for school purposes, nor shall he permit his cart, wagon or vehicle to stand on any public highway within said distance of such school property.
- D. No person shall solicit any business whatsoever at the scene of any accident within the incorporated area of the city.

§ 168-11. - Sales at public functions on city property.

Notwithstanding any other provision, no person shall sell merchandise at any public function held in the city, on lands owned by the city, without first obtaining written permission therefor from the City Manager.

§ 168-12. - Records; supervision of license holders.

The Code Official shall keep a record of all registrations made under this chapter, and the Code Official shall supervise the activities of all holders of such licenses.

§ 168-13. - Exemptions from license requirements.

The following persons are exempt from the license requirements of this chapter:

- A. Farmers engaged in selling only produce of their own farms from a truck or other vehicle.
- B. Persons engaged in the sale of goods, wares and merchandise, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
- C. Persons 16 years of age or under.

§ 168-14. - Revocation of license; hearing for reinstatement.

- A. Any license hereinafter issued may be revoked by the Code Official upon the failure of the licensee to comply with the standards of conduct established herein or upon ascertainment that the licensee has made any false statements in the application for the license hereunder or upon such licensee being arrested and convicted of any crime involving moral turpitude.
- B. Any person whose license has been revoked shall be entitled to appear, with counsel if desired, before the City Council at a regular or special meeting and be heard on behalf of a request for reinstatement of said license.

§ 168-15. - Form and contents of permit.

Each permit shall be issued in card form, shall be carried by the person for whose benefit it is issued and shall contain the following: the number of the permit, fee paid, date of issue, expiration date and the name, age, weight, color, name of employer, address and signature of the holder. The reverse side of such permit shall contain any regulations then in effect and controlling the holder, as well as any conditions and/or limitations to which such permit is subject.

§ 168-16. - Violations and penalties.

- A. Violation of any provision of this chapter shall be punishable, upon conviction, by a fine of not less than \$100 nor more than \$500. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.
- B. In addition to or as an alternative to the above-provided penalties, the city may also maintain an action or proceeding in the name of the city in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this chapter.
- C. In addition, any person who violates any provision of the foregoing may be subject to a loss of the license privilege herein granted.

Chapter 168 - PEDDLING, SOLICITING AND TRANSIENT MERCHANTS

§ 168-1. - Definitions and word usage.

A. As used in this chapter, the following terms shall have the meanings indicated:

PERSON — Any natural person, association, partnership, firm or corporation.

SOLICITING and PEDDLING

- (1) SOLICITING — The seeking or taking of contracts or orders for any goods, wares, merchandise or services for future delivery or for subscriptions or contributions upon any streets or sidewalks or from house to house within the cityCity.
- (2) PEDDLING — The selling or offering for sale of any goods, wares, merchandise or services for immediate delivery which the person selling or offering for sale carries with him in traveling or has in ~~his~~his/her possession or control upon any of the streets or sidewalks or from house to house within the cityCity.
- (3) Neither the word "soliciting" nor "peddling" shall apply to:
 - (a) Farmers seeking or taking orders for or selling or offering for sale their own produce.
 - (b) ~~The Vendors at farmer's markets or special events that are approved by the City to use public streets, parks and facilities for their event. seeking or taking of orders for or the selling or offering for sale of bread or bakery products, meat or meat products or milk and milk products by any manufacturer or producer thereof~~

SOLICITOR or PEDDLER — Any person who shall engage in soliciting or peddling, respectively, as hereinabove defined.

FOOD ESTABLISHMENT - A business operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption.

MOBILE FOOD VEHICLE – A Food Establishment that is located upon a vehicle including motorcycles and bicycles, or which is pulled by a vehicle, where food or beverage is cooked, prepared or served for individual portion service. This/her definition includes but is not limited to: mobile food kitchens, pushcart vendors, bicycle cart vendors, mobile food trucks, canteen trucks, and coffee trucks. This/her definition does not apply to "meals on wheels" program vehicles, or food home delivery services.

PRIVATE PARTY – A social gathering on private property not open to the public.

TRANSIENT MERCHANT — A person who engages or proposes to engage temporarily in merchandising business in the cityCity and occupies a room, building, tent, vehicle, ~~food truck~~Mobile Food Vehicle, lot, stand or other premises for the purpose of selling, trading or bartering goods, food, wares and merchandise.

B. Word usage. The singular shall include the plural.

§ 168-2. - Registration required.

No person shall engage in soliciting or peddling or act as a transient merchant in the cityCity without first registering with the City Code Official.

§ 168-3. - Information to be supplied.

- A. Every person desiring to engage in soliciting or peddling in the cityCity shall first register, under oath, with the Code Official. Upon such application, such person shall give ~~his/his/her~~ name, address and age; ~~undergo his previous a criminal background check through the Delaware State of Identification record, if with the report sent to the Code Official any;~~ the name and address of the person for whom he works and a letter appended to the application authorizing the applicant to represent the firm the applicant purports to represent, if any; the type or types of article, device, subscription, contribution, service or contract which he desires to sell or for which he wishes to solicit within the cityCity; the length of time he wishes to be registered; the type of vehicle he uses, if any, and its registration number; and the name, address and title of a company officer upon whom process or other legal notice may be served, if the applicant is a corporation or company.
- B. Where a person makes application for himself and one or more helpers, all applicable personal information specified above shall be given for each helper, and an individual license shall be required for each helper. No license issued under this chapter shall be transferable from one person to another.
- C. When applying for a permit for a Mobile Food Vehicle, a current, valid Food Establishment permit from the Delaware Department of Health and Social Services Division of Public Health and any inspection reports shall be provided to the City.

§ 168-4. - Fees.

The fee for a permit or license shall be set by the CityCity Council each year as part of the CityCity Fee Schedule. The license or permit fee shall be prorated after July 1. No refund shall be given for any solicitor, peddler, or transient merchant that ceases to operate during the licensing period. No permit or license shall be issued under this chapter except upon payment of a fee of \$50.

§ 168-5. - Issuance of license or permit; list of vendors.

- A. Upon registering with the City as aforesaid, each solicitor or peddler shall be issued, ~~unless he shall have been convicted of a crime involving moral turpitude,~~ a license or permit and may, ~~unless he shall have been convicted of a crime involving moral turpitude,~~ be permitted to solicit or peddle or act as a transient merchant within the cityCity for the licensed period beginning on the date such license or permit is issued and ending on the expiration date thereof. Such license or permit shall not be transferable.
 - (1) No license or permit shall be issued to any person or business unless all taxes, assessments, sewer, water, electric, trash charges and any other fees due the CityCity are paid and in good standing.
- B. Notwithstanding the provisions of Subsection A hereof, organizers of special events that are approved by the City to use public streets, parks and facilities for their event may restrict or select the vendors or transient merchants that can participate at their farmer's market or event, provided that any Mobile Food Vehicles are properly permitted in accordance with the provisions of this Chapter. Event organizers shall provide a list of the approved vendors (including Mobile Food Vehicles) to the City no less than one week prior to the event. the Code Official shall be authorized to delegate the issuance of transient merchant licenses to the owner of any validly existing marketplace for casual retail sales and barter by independent vendors upon condition that said owner shall provide to the Code Official a complete list of vendors to whom licenses were issued.
 - ~~(1) The list required by this subsection shall contain a statement on behalf of said owner as follows: "This list constitutes a complete list of vendors for the reporting period. Each of said vendors was issued a transient merchant license in compliance with the City of Milford Municipal Code."~~
 - ~~(2) The list shall be provided at least once each month or as required by the Code Official.~~

§ 168-6. - Evidence of registration; display of license; restrictions.

- A. Every solicitor or peddler shall, at all times while engaged in soliciting or peddling in the cityCity, carry evidence of such registration upon his/his/her person and shall exhibit such evidence upon request to all police officers, cityCity officials and citizens.
- B. Every person holding a transient merchant license shall post said license in a prominent place in his/his/her business premises and shall maintain said license as such at all times.
- C. No solicitor or peddler shall engage in selling or offering for sale or in seeking or taking of orders or contracts for any goods, wares, merchandise, article, device, subscription, contribution, service or contract not mentioned upon such license, nor shall any person use any vehicle for soliciting or peddling other than the vehicle registered upon his/his/her license.
- D. No license issued upon the provisions of this chapter may be transferred from one person to another. The person designated in said license shall be the only person authorized to engage in such business thereunder.

§ 168-7. - Hours of sale.

No person shall engage in soliciting or peddling at any time on Sunday or on any other day of the week before 9:00 a.m. or after 5:00 p.m. except upon invitation from or an appointment with the resident.

§ 168-8. - Noise.

No person engaged in soliciting or peddling or as a transient merchant shall hawk or cry his/his/her goods, wares, merchandise, articles, contracts or services upon any of the streets or sidewalks of the cityCity, nor shall he use any loudspeaker or horn or any other device on public property for announcing his/his/her presence by which members of the public are annoyed.

§ 168-9. - Vehicles.

No person engaged in soliciting or peddling or as a transient merchant shall park any vehicle upon any of the streets or alleys of the cityCity in order to sort, rearrange or clean any of his/his/her goods, wares or merchandise or any samples, order books, contracts, circulars, literature or advertising matter pertaining thereto, nor may any such person place or deposit any refuse upon any such street or curbstone market or soliciting or peddling office by parking any vehicle upon any street or alley in the cityCity for longer than necessary in order to solicit from or peddle to persons residing in the immediate vicinity, unless prior written permission is provided by the City Manager.

§ 168-10. - Prohibited acts.

- A. No person engaged in soliciting or peddling or acting as a transient merchant shall occupy any of the streets or alleys or sidewalks of the cityCity for the purpose of soliciting or peddling, with or without any stand or counter, unless prior written permission is provided by the City Manager.
- B. No person engaged in soliciting or peddling shall enter upon premises for the purpose of soliciting or peddling which are posted with signs indicating that soliciting or peddling thereon is prohibited.
- C. No peddler or solicitor shall peddle, vend or sell his/his/her goods or wares within 200 feet of any church or place of worship or any place occupied exclusively as a public or private school or for school purposes, nor shall he permit his/his/her cart, wagon or vehicle to stand on any public highway within said distance of such school property.
- D. No person shall solicit any business whatsoever at the scene of any accident within the incorporated area of the cityCity.
- E. No transient merchant shall conduct business on a residential lot in a residentially zoned area unless the merchant is permitted by the property owner to provide food, goods or services for a private gatheringPrivate Party or function. All goods and services would be provided to the guests of the private gathering or function and not the general public.

§ 168-11. - Sales at public functions on ~~city~~City property.

Notwithstanding any other provision, no person shall sell merchandise at any public function held in the ~~city~~City, on lands owned by the ~~city~~City, without first obtaining written permission therefor from the ~~City~~City Manager.

§ 168-12. - Records; supervision of license holders.

The Code Official shall keep a record of all registrations made under this chapter, and the Code Official shall supervise the activities of all holders of such licenses.

§ 168-13. - Exemptions from license requirements.

The following persons are exempt from the license requirements of this chapter:

- A. Farmers engaged in selling only produce of their own farms from a truck or other vehicle.
- B. Persons engaged in the sale of goods, wares and merchandise, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
- C. Persons 16 years of age or under.

§ 168-14. - Revocation of license; hearing for reinstatement.

- A. Any license hereinafter issued may be revoked by the Code Official upon the failure of the licensee to comply with the standards of conduct established herein or upon ascertainment that the licensee has made any false statements in the application for the license hereunder or upon such licensee being arrested and convicted of any crime involving moral turpitude.
- B. Any person whose license has been revoked shall be entitled to appear, with counsel if desired, before the ~~City~~City Council at a regular or special meeting and be heard on behalf of a request for reinstatement of said license.

§ 168-15. - Form and contents of permit.

Each permit shall be issued in card form, shall be carried by the person for whose benefit it is issued and shall contain the following: the number of the permit, fee paid, date of issue, expiration date and the name, age, weight, color, name of employer, address and signature of the holder. The reverse side of such permit shall contain any regulations then in effect and controlling the holder, as well as any conditions and/or limitations to which such permit is subject.

§ 168-16-17. – Mobile Food Vehicle Rules and Regulations

(a) General. The following rules and regulations apply:

(1) No operator of a Mobile Food Vehicle shall park, stand or move a vehicle and conduct business within areas of the City where the permit holder has not been authorized to operate;

(2) The issuance of a permit does not grant or entitle the exclusive use of a location to the Mobile Food Vehicle permit holder, other than the time and place as approved for the term of the permit;

(3) No Mobile Food Vehicle shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches and standup counters, unless a proposal for such seating/standup arrangements is submitted with the permit application and approved by the City Manager;

(4) Permit holders shall provide customers with single service articles, such as plastic silverware and paper plates, and a waste container for their disposal. All Mobile Vehicles shall offer a waste container for

public use that the operator shall empty at his/her or her own expense if not provided by the Special Event sponsor.

(5) No Mobile Food Vehicle shall make or cause to be made any unreasonable or excessive noise in violation of the City's Codified Ordinances.

(6) No permittee shall employ the use of flashing or moving lights on or near a Mobile **Food** Vehicle as part of its operation.

(7) A Mobile Food Vehicle may not operate on public property, including right-of-way, unless the City has otherwise granted approval on the Special Event Permit application for its operation at the particular location during specific times.

(8) The City reserves the right to relocate a mobile food truck to an alternate location as determined by the City Manager if the approved location needs to be used for emergency purposes or other public benefit.

(9) Mobile Food Vehicles shall adhere to all applicable parking regulations.

(b) The operation of Mobile **Food** Vehicles shall at all times be in compliance with all applicable governmental rules and regulations, including but not limited to those of the Delaware Department of Health and Social Services Division of Public Health and the Delaware Department of Transportation.

§ 168-~~1716~~. - Violations and penalties.

- A. Violation of any provision of this chapter shall be punishable, upon conviction, by a fine of not less than \$100 nor more than \$500. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.
- B. In addition to or as an alternative to the above-provided penalties, the ~~city~~City may also maintain an action or proceeding in the name of the ~~city~~City in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this chapter.
- C. In addition, any person who violates any provision of the foregoing may be subject to a loss of the license privilege herein granted.

Chapter 180 - RESIDENTIAL RENTAL OPERATING LICENSES

[HISTORY: Adopted by the City Council of the City of Milford 12-8-2008 by Ord. No. 2008-8.¹
▮ Amendments noted where applicable.]

GENERAL REFERENCES qc

Building construction — See Ch. 88.	Zoning — See Ch. 230.
Property maintenance — See Ch. 174.	

§ 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 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.
- 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.
- D. Landlord's name, mailing address and telephone number.

§ 180-7. - 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.

[Ord. No. 2011-8, §§ 2, 3, 4-11-2011]

§ 180-8. - 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. - 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.

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 and Inspections Department Division 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 Division 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 home and/or cellular 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 home and/or cellular 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 fax 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.

§ 180-810. - 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.

§ 180-911. - 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.

ARTICLE XI. - RENTAL PROPERTIES

Town of Smyrna

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.

(Ord. of 9-16-96(2))

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.

(Ord. of 9-16-92(2); Ord. of 12-15-97(1), § 1; Ord. of 5-15-00, § 3; Ord. No. 012-08, § 1, 12-15-08)

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.

(Ord. of 9-16-96(2); Ord. No. 12-18-00(3), §§ 1, 2; Ord. No. 12-18-00(4), § 1; Ord. of 1-22-02(1), § 1; Ord. No. 016-05, § 23, 8-15-05)

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.**

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- (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.

(Ord. of 9-16-96(2); Ord. of 12-15-97(1), §§ 2, 3)

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 fax 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.

(Ord. of 9-16-96(2))

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.

(Ord. of 9-16-96(2))

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.

(Ord. of 9-16-96(2); Ord. of 7-20-98(2))

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.

(Ord. of 9-16-96(2))

Secs. 18-409—18-500. - Reserved.

Sec. 42-107. - Disorderly dwelling units.

(a) *Findings.* The town council has determined that:

- (1) At various times, the occupants or users of some dwelling units in the town use those dwelling units for the purpose of engaging in disorderly and disruptive conduct, loud and disturbing noises, public intoxication and other violent and tumultuous behavior. The town council has also determined that a number of persons in legal possession of dwelling units in the town are engaging in the practice of allowing such dwelling units, designed for occupancy by essentially single families, to be occupied or used by groups of persons, frequently, but not necessarily, comprised of minors with insufficient adult supervision. The town council has further determined that these practices encourage incidents of disorderly conduct, loud and disturbing noises, public intoxication, violent and tumultuous behavior, disturbing the peace and other similar acts which are detrimental to the public health, safety, peace and welfare of the town.
- (2) The persons entitled to lawful possession of such premises who fail to take appropriate measures to prevent recurrences of such incidents after due notice of previous disturbances by persons occupying or using the premises must be held responsible for allowing such conduct to occur on those premises.

(b) *Purpose.* It is, therefore, declared to be the purpose and intent of this section to prohibit the use of dwelling units in the town for disorderly and other disruptive conduct by imposing civil penalties not only upon the occupants and/or users of such premises but also by imposing civil penalties on those persons in possession of any premises in the town who, after notice of a previous conviction for conduct proscribed by this section, fail to take appropriate actions to prevent a subsequent violation.

(c) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Dwelling unit shall include not only the structure itself but also the lands and ways, if any, under control of the person in lawful possession.

Dwelling unit used for disorderly or other disruptive conduct means any dwelling unit, attached or detached, or any apartment or commercial lodging room located within the town, the occupants, users or persons in lawful possession of which engage in any of the conduct proscribed by subsection (d) of this section.

Occupant and/or user means any person occupying or present on a premises.

Person in lawful possession means any person, firm, partnership, association or corporation, or any combination thereof, having legal possession of any premises in the town. The term shall mean the owner in fee or of a life estate if the property is not under lease, or the ultimate lessee or sublessee if the property is under lease.

Premises means a dwelling unit, apartment or commercial lodging room, together with the lands and ways, if any, under the control of the person in possession.

(d) ***Unlawful acts by occupants and/or users.*** Any person occupying or present on a premises who by himself or in concert with other occupants and/or users causes public inconvenience, annoyance or alarm to any other person or persons or who creates an unreasonable risk thereof by engaging in or causing any of the following conduct shall be violating this section:

- (1) Engaging in fighting or in violent, tumultuous or threatening behavior.
- (2) Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

- a. Playing any radio, phonograph, tapedeck or musical instrument in such a manner or at such a volume, particularly between the hours of 9:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.
 - b. The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.
 - c. Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.
- (3) Making any offensive, coarse, obscene or profane utterance, gesture or display to another person or persons in such a manner as is likely to provoke a violent or disorderly response.
 - (4) Obstructing or hindering the free and convenient passage of persons walking, riding or driving over, along or across any public way, sidewalk, pavement, street or alley, including the boardwalk.
 - (5) Engaging in any act of indecent exposure or public display of an obscene act or gesture.
 - (6) Urinating in public view.
- (e) *Unlawful acts by persons entitled to lawful possession.* Any person entitled to lawful possession who, after notice as herein provided, allows, permits or fails to take affirmative action to prevent repeated violations of this section shall be deemed to be promoting the use of a dwelling unit for disorderly or other disruptive conduct in violation of this section. A person in lawful possession shall be presumed to have allowed, permitted or failed to take affirmative action to prevent repeated violations of this section where a violation of subsection (d) of this section occurs after such person entitled to lawful possession has, within the past three months, previously been provided actual notice by the police department of a previous conviction for conduct proscribed by such subsection (d). Actual notice, as used in this subsection, shall mean verbal or written notice to one or more of the persons entitled to legal possession. If written notice is attempted, it shall be deemed effective by mailing a written notice thereof to the person entitled to lawful possession at his last known mailing address by certified mail, return receipt requested, with proper postage affixed. If such notice comes back undelivered (except refused), the town shall exercise reasonable efforts to provide actual notice by some other means.
 - (f) *Penalties.* Any occupant and/or user found guilty of violating subsection (d) of this section or any person entitled to lawful possession found guilty of violating subsection (e) of this section shall be guilty of criminal violation and shall be subject to criminal penalties as provided under Section 1-11 of this Code.

(Ord. of 8-5-02(1), § 14)

§ 5512 Rules and regulations relating to certain buildings; landlord remedies.

Any provision of the Landlord-Tenant Code [Chapters 51 through 59 of this title] to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where:

- (1) The building is the primary residence of the landlord; and
- (2) No more than 3 rooms in the building are rented to tenants; and
- (3) No more than 3 tenants occupy such building.

(70 Del. Laws, c. 513, § 3.)

§ 5513 Landlord remedies relating to breach of rules and covenants.

(a) If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

(1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) 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 an action for summary possession.

(b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

(c) Upon notice to tenant, the landlord may bring an action or proceeding for waste or for breach of contract for damages suffered by the tenant's wilful or negligent failure to comply with tenant's responsibilities under the preceding section. The landlord may request a forthwith summons.

(70 Del. Laws, c. 513, § 3.)

§ 5514 Security deposit.

(a)(1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of 1 month's rent where the rental agreement is for 1 year or more.

(3) No landlord may require a security deposit in excess of 1 month's rent (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month where the tenancy has lasted 1 year or more. After the expiration of 1 year, the landlord shall immediately return, as a credit to the tenant, any security deposit amount in excess of 1 month's rent, including such amount which when combined with the amount of any surety bond is in excess of 1 month's rent.

(4) The security deposit limits set forth above shall not apply to furnished rental units.

(b) Each security deposit shall be placed by the landlord in an escrow bank account in a federally-insured banking institution with an office that accepts deposits within the State. Such account shall be designated as a security deposits account and shall not be used in the operation of any business by the landlord. The landlord shall disclose to the tenant the location of the security deposit account. The security deposit principal shall be held and administered for the benefit of the tenant, and the tenant's claim to such money shall be prior to that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(c) The purpose of the security deposit shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

Part III
Residential Landlord-Tenant Code
Chapter 57

SUMMARY POSSESSION

§ 5701 Jurisdiction and venue.

An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial rental unit is located. In the event that more than 1 Justice of the Peace Court in a county hears civil cases, then an action shall be maintained in the Justice of the Peace Court that possesses territorial jurisdiction over the area in which the premises or commercial unit is located. For purposes of this chapter, the term "rental agreement" shall include a lease for a commercial rental unit.

(70 Del. Laws, c. 513, § 4; 76 Del. Laws, c. 250, § 1.)

§ 5701A Establishing territorial jurisdiction.

In any county in which more than 1 Justice of the Peace Court location has been designated to hear civil cases, each court location shall have a geographical area assigned to it for the purpose of establishing jurisdiction over actions for summary possession. Each court location shall be located within its given territory. Pursuant to § 5701 of this title, any action for summary possession involving a residential or commercial unit within a given territory shall be maintained at the Justice of the Peace Court which has jurisdiction over the given territory. Designation of the boundaries between territories shall be accomplished by court rule. In so doing, the Court may take into account the resources of each Justice of the Peace Court location; how these resources may be utilized best in serving the public good; convenience to the public; and population and demographic information, both current and projected.

(76 Del. Laws, c. 250, § 2.)

§ 5702 Grounds for summary proceeding.

Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because:

- (1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant;
- (2) The tenant has wrongfully failed to pay the agreed rent;
- (3) The tenant has wrongfully deducted money from the agreed rent;
- (4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;
- (5) The tenant, employee, servant or agent of the landlord holds over for more than 15 days after dismissal when the housing is supplied by the landlord as part of the compensation for labor or services;
- (6) The tenant holds over for more than 5 days after the property has been duly sold upon the foreclosure of a mortgage and the title has been duly perfected;
- (7) The rightful tenant of the rental unit has been wrongfully ousted;
- (8) The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;
- (9) The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;
- (10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained;
- (11) Or, if, and only if, it pertains to manufactured home lots, for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended; or
- (12) The tenant who is the sole tenant under the rental agreement has died and become the deceased sole tenant under the residential rental agreement.

(70 Del. Laws, c. 513, § 4; 74 Del. Laws, c. 35, § 3; 79 Del. Laws, c. 65, § 3.)

§ 5703 Who may maintain proceeding.

The proceeding may be initiated by:

- (1) The landlord;
- (2) The owner;
- (3) The tenant who has been wrongfully put out or kept out;
- (4) The next tenant of the premises, whose term has begun; or
- (5) The tenant.

(70 Del. Laws, c. 513, § 4.)

§ 5704 Commencement of action and notice of complaint.

(a) The proceeding shall be commenced by filing a complaint for possession with the court.

(b) Upon commencement of an action, the court shall issue the process specified in the praecipe and shall cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing. The notice shall further state that if the defendant shall fail at such time to appear and defend against the complaint, defendant may be precluded from afterwards raising any defense or a claim based on such defense in any other proceeding or action.

(c) The party requesting the issuance of process may file a motion for the appointment of a special process server, consistent with Justice of the Peace Court Civil Rules. The party requesting the appointment of a special process server may prepare a form of order for signature by the clerk of court under the seal of the court. Blank forms for a motion for the appointment of a special process server and for an order appointing such a special process server shall be provided by the clerk of the court on request of the party.

(70 Del. Laws, c. 513, § 4.)

§ 5705 Service and filing of notice.

(a) The notice of hearing and the complaint shall be served at least 5 days and not more than 30 days before the time at which the complaint is to be heard.

(b) The notice and complaint, together with proof of service thereof, shall be filed with the court before which the complaint is to be heard prior to the hearing, and in no event later than 5 days after service. If service has been made by certified or registered mail, the return receipt, signed, refused or unclaimed, shall be proof of service.

(c) Service of the notice and complaint may be made in any manner consistent with either § 5704 or § 5706 of this title.

(70 Del. Laws, c. 513, § 4.)

§ 5706 Manner of service.

(a) Service of the notice of hearing and complaint shall be made in the same manner as personal service of a summons in an action.

(b) If service cannot be made in such manner, it shall be made by leaving a copy of the notice and complaint personally with a person of suitable age and discretion who resides or is employed in the rental unit.

(c) If no such person can be found after a reasonable effort, service may be made:

(1) Upon a natural person by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit within 1 day thereafter, and by sending by either certified mail or first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or

(2) If defendant is an artificial entity, pursuant to Supreme Court Rule 57, by sending by certified mail or by sending by first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, within 1 day after affixation, additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.

(d) Service pursuant to this section shall be considered actual or statutory notice.

(70 Del. Laws, c. 513, § 4.)

§ 5707 Contents of complaint generally.

The complaint shall:

(1) State the interest of the plaintiff in the rental unit from which removal is sought;

(2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;

(3) Describe the rental unit from which removal is sought;

(4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and

(5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

(70 Del. Laws, c. 513, § 4.)

§ 5708 Additional contents of certain complaints.

If possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to tenant's use and enjoyment of the rental unit, the complaint shall, in addition to the requirements of the foregoing section:

(1) Set forth the rule or provision of the rental agreement allegedly breached, together with the date the rule was made known to the tenant and a copy of the rule or provision as initially provided to the tenant and the manner in which such rule or provision was made known to the tenant;

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(2) Allege with specificity the facts constituting a breach of the rule or provision of the rental agreement and that notice or warning as required by law was given to the tenant;

(3) Set forth the facts constituting a continued or recurrent violation of the rule or provision of the rental agreement;

(4) Set forth the purpose served by the rule or provision of the rental agreement allegedly breached; and

(5) Allege that where the rule is not a part of the rental agreement or any other agreement of the landlord and tenant at the time of the formation of the rental agreement, that it does not work a substantial modification of the tenant's bargain or, if it does, that the tenant consented knowingly in writing to the rule.

(70 Del. Laws, c. 513, § 4.)

§ 5709 Answer.

At the time when the petition is to be heard, the defendant or any person in possession or claiming possession of the rental unit may answer orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counter-claim, not to exceed the jurisdiction of the court.

(70 Del. Laws, c. 513, § 4.)

§ 5710 Trial.

Where triable issues of fact are raised, they shall be tried by the court. At the time when an issue is joined, the court, at the application of either party and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence or by consent of all the parties who appear, may adjourn the trial, but not more than 10 days, except by consent of all parties.

(70 Del. Laws, c. 513, § 4.)

§ 5711 Judgment.

(a) The court shall enter a final judgment determining the rights of the parties. The judgment shall award to the successful party the costs of the proceeding.

(b) The judgment shall not bar an action, proceeding or counterclaim commenced or interposed within 60 days of entry of judgment for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.

(c) If the proceeding is founded upon an allegation of forcible entry or forcible holding out, the court may award to the successful party a fixed sum as damages, in addition to the costs.

(70 Del. Laws, c. 513, § 4.)

§ 5712 Default judgment.

(a) No judgment for the plaintiff shall be entered unless the court is satisfied, upon competent proof, that the defendant has received actual notice of the proceeding or, having abandoned the rental unit, cannot be found within the jurisdiction of the court after the exercise of reasonable diligence. Posting and first-class mail, as evidenced by a certificate of mailing, is acceptable as actual notice for the purposes of a default judgment.

(b) A party may, within 10 days of the entry of a default judgment or a nonsuit, file a motion with the court to vacate the judgment and if, after a hearing on the motion, the court finds that the party has satisfied the requirements of Justices of the Peace Civil Rule 60(b), it shall grant the motion and permit the parties to elect a trial before a single judge or a jury trial.

(70 Del. Laws, c. 513, § 4.)

§ 5713 Jury trials.

(a) In any civil action commenced pursuant to this chapter, the plaintiff may demand a trial by jury at the time the action is commenced and the defendant may demand a trial by jury within 10 days after being served. Upon receiving a timely demand, the justice shall appoint 6 impartial persons of the county in which the action was commenced to try the cause. In making such appointments, the justice shall appoint such persons from the jury list being used at time of appointment by the Superior Court in the county where the action was commenced.

(b) The jury shall be sworn or affirmed that they will "faithfully and impartially try the cause pending between the said _____ plaintiff and _____ defendant and make a true and just report thereupon according to the evidence" and shall hear the allegations of the parties and their proofs. If either party fails to appear before the jury, they may proceed in that party's absence. When the jury or any 4 of them agree, they shall make a report under their hands and return the same to the justice who shall give judgment according to the report.

(c) If any juror appointed fails to appear or serve throughout the trial the justice may supply a replacement by appointing and qualifying another, but there shall be no trial by jury if the defendant has not appeared.

(d) In all other cases, the justice shall hear the case and give judgment according to the right of the matter and the law of the land.

(e) A Chief Magistrate shall have the authority to designate courts in each county which can accommodate a jury trial.

(70 Del. Laws, c. 513, § 4.)

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§ 5714 Compelling attendance of jurors.

(a) In a proceeding under this chapter, the justice may require the attendance of the jurors the justice appoints, and may issue a summons under hand and seal to a constable for summoning them to appear before the court.

(b) If any juror duly summoned fails to appear as required, or to be qualified and serve throughout the trial, the juror shall, unless the juror shows to the justice a sufficient excuse, be guilty of contempt and shall be fined \$50 which shall be levied with costs by distress and sale of the juror's goods and chattels by virtue of a warrant by the justice.

(c) The warrant shall be directed to a constable in the following manner:

_____ County, ss. The State of Delaware.

To any constable, greeting:

Whereas, _____ of _____ has been adjudged by _____, 1 of our justices of the peace, to be guilty of a contempt in making default after due summons as a juror in a case pending before said justice and has been ordered to pay a fine of \$50 in pursuance of the act of assembly in such case provided, and

Whereas, the said _____ has neglected to pay the said sum, we therefore command you to levy the said sum of \$50 with _____ costs and your costs hereon by distress and sale of the goods and chattels of the said _____ upon due notice given as upon other execution process.

Witness the hand and seal of the said justice the _____ day of 20 _____

(70 Del. Laws, c. 513, § 4.)

§ 5715 Execution of judgment; writ of possession.

(a) Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(b) The officer to whom the writ of possession is directed and delivered shall give at least 24 hours' notice to the person or persons to be removed and shall execute it between the hours of sunrise and sunset.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot, to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from the storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(c) The plaintiff has the obligation to notify the constable to take the steps necessary to put the plaintiff in full possession.

(d) The issuance of a writ of possession for the removal of a tenant cancels the agreement under which the person removed held the premises and annuls the relationship of landlord and tenant. Plaintiff may recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced and the reasonable value of the use and occupation to the time when a writ of possession was issued and for any period of time with respect to which the agreement does not make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.

(e) If, at the time of the execution of the writ of possession, the tenant fails to remove tenant's property, the landlord shall have the right to and may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant. Nothing in this subsection shall be construed to prevent the landlord from suing for both rent and possession at the same hearing.

(1) If there is no appeal from the judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove tenant's property, then the landlord may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession where no appeal has been filed must contain the following language:

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NOTICE WHERE NO APPEAL FILED

If you do not remove your property from the premises within 24 hours, then the landlord may immediately remove and store your property for a period of 7 days at your expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(f) If, at the time of the execution of the writ of possession, an appeal of the judgment of possession has been filed:

(1) If there has been an appeal filed from a judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove property within 24 hours, then the landlord may immediately remove and store such property, at the tenant's expense, for a period of 7 days after the resolution of the appeal, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession, where an appeal has been filed, must contain the following language:

NOTICE WHERE APPEAL HAS BEEN FILED

If you do not remove your property from the premises within 24 hours, then the landlord may immediately remove and store your property until 7 days after your appeal has been decided, at your expense. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the 1st 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(g) Nothing in subsection (d) of this section shall prevent the landlord from making a claim for rent due from the tenant under the provisions of the lease. The landlord shall have the duty of exercising diligence in landlord's efforts to re-rent the premises. The landlord shall have the burden of showing the exercise of such diligence. The landlord shall have the right to sue for both rent and possession at the same hearing.

(h) Whenever the plaintiff is put into full possession under this chapter it shall be the duty of the plaintiff, at the time actual repossession occurs, to have the locks to the premises changed if said premises are to be further leased out. Any plaintiff who fails to comply with this subsection shall be liable to any new tenant whose person or property is injured as a result of entry to the premises gained by the dispossessed tenant by use of a key still in their possession which fit the lock to the premises at the time of this tenancy.

(70 Del. Laws, c. 513, § 4.)

§ 5716 Stay of proceedings by tenant; good faith dispute.

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

(70 Del. Laws, c. 513, § 4.)

§ 5717 Stay of proceedings on appeal.

(a) *Nonjury trials.* — With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote, on the original complaint within 15 days after such request for a trial de novo. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(b) An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

(c) *Jury trials.* — With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request, in writing, within 5 days after judgment, a review by an appellate court comprised of 3 justices of the peace other than the justice of the peace who presided at the jury trial, as appointed by the chief magistrate or a designee. This review shall be on the record and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial court level. The decision on the record shall be by majority vote. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(d) The Court shall not issue the writ of possession during the 5-day appeal period. After the 5-day appeal period has ended, the Court may issue the writ of possession at the plaintiff's request if the defendant has filed an appeal, but not filed a bond or other assurance or an in forma pauperis request to stay the issuance of the writ of possession. If the plaintiff executes on the writ of possession prior to a determination of the appeal and the appealing party is ultimately successful, then the plaintiff shall be responsible for reasonable cover damages (including, but not limited to, the cost of substitute housing or relocation) for the period of the dispossession as a result of the execution of the writ of possession, plus court costs and fees.

(e) An aggrieved party may appeal in forma pauperis if the Court grants an application for such status. In that event, the Court may waive the filing fee and bond for a trial de novo, a trial on the record or a request to stay the writ of possession.

(f) An appeal taken pursuant to this section may include any issue on which judgment was rendered at the trial court level, including the issue of back rent due, any other statute to the contrary notwithstanding.

(70 Del. Laws, c. 513, § 4.)

§ 5718 Proceedings in forma pauperis.

Upon application of a party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without prepayment of fees and costs or security therefor by a person who makes an affidavit that such person is unable to pay the costs or give security therefore. Such affidavit shall state the nature of the action or defense and the affiant's belief that the affiant is entitled to redress, and shall state sufficient facts from which the Court may make an objective determination of the petitioner's alleged indigence.

The Court may, in its discretion, conduct a hearing on the question of indigence. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the prothonotary shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued court costs from any party for whose benefit this rule has been applied if said party has recovered a judgment in said proceedings or received any funds in settlement thereof. A party and such party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

(70 Del. Laws, c. 513, § 4.)

§ 5719 Landlord regaining possession of residential rental unit upon the death of a deceased sole tenant.

(a) Possession of a residential rental unit upon the death of a sole tenant shall be returned to the landlord without an action for summary possession if:

(1) An affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, in which case the landlord shall allow the affiant or personal representative access to the residential rental unit of the deceased sole tenant to remove the deceased sole tenant's belongings; and

(2) An affiant or personal representative informs the landlord that further access to the deceased sole tenant's residential rental unit is not needed by the affiant or personal representative and/or their agents or 30 days have elapsed since the death of the deceased sole tenant and the affiant or personal representative has not provided the landlord written notice that access to the deceased sole tenant's residential rental unit is still needed by the affiant or personal representative and/or their agents.

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(b) If an affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, the landlord still retains the right to initiate at any time an action for summary possession and/or moneys due, in which case the landlord shall bring the action against the estate of the deceased sole tenant and serve the complaint upon the affiant or personal representative at the address provided by the affiant or personal representative and, if no such good address is provided, then to serve the complaint upon the register of wills in the county in which the residential rental unit is located. If an affiant or personal representative of the deceased sole tenant's estate does not present the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, the landlord must serve the register of wills in the county in which the residential unit is located in order to bring an action for summary possession to obtain possession of the residential rental unit and moneys due, if any. Anytime the register of wills is to be served as a registered agent for an estate, prior to initiating the action, the landlord must place a notice of such action in a paper that is circulated in the county in which the residential rental unit is located. The notice must identify: the name of the landlord; the name of the deceased sole tenant; the residential rental unit address; the type of action to be brought; the court in which such action will be brought; and the amount of the claim, if any.

(c) If at the time of the execution of the writ of possession there is still property inside the deceased sole tenant's residential rental unit that does not belong to the landlord then the landlord shall have the right to immediately remove and store such property for a period of 7 days, at the expense of the estate of the deceased sole tenant. If at the end of such period, a representative of the estate, who has valid documentation of such representation issued by the register of wills pursuant to Title 12, has failed to claim said property and reimburse the landlord for the reasonable expenses of removal and storage, such property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to any party. Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(d) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of receiving possession of the residential rental unit (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended) to a representative of the estate of the deceased sole tenant, if any, who has valid documentation of such representation issued by the register of wills pursuant to Title 12. Within 20 days after receiving possession of the residential rental unit of the deceased sole tenant (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended), the landlord shall provide the representative of the estate of the deceased sole tenant, if any, with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between any rental amount due and owing, the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment is due. The representative's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the rental amount due, if any, and damages as specified by the landlord, unless the representative of the estate, within 10 days of the representative's receipt of such tender of payment, objects in writing to the amount withheld by the landlord. Failure for a representative of the estate to present the landlord with valid documentation of such representation issued by the register of wills or failure of the representative to provide the landlord with a good address shall relieve the landlord of responsibility to give notice of any damages and potential liability for double the amount of the security deposit, but the landlord shall continue to be liable to the representative of the estate for any unused portion of the security deposit; provided, that the representative of the estate shall make a claim in writing to the landlord within 1 year from the landlord receiving possession of the residential rental unit of the deceased sole tenant.

(79 Del. Laws, c. 65, § 4.)

(e) The State Housing Code shall not be administered in any community which has enacted its own code which contains minimum standards for the promotion and protection of the safety and health of the public which are equal to or exceed the standards established by subchapter II of this chapter and administration and enforcement procedures which are substantially equivalent to those set forth in subchapter III of this chapter, as determined by the Housing Director. At the request of any community which has adopted a housing code, the Housing Director shall provide written notice to the community of its determination, stating the reasons therefore. Provided, however, that if such community thereafter seeks to amend, alter or otherwise change its housing code, it shall provide the Housing Director with a copy of such proposed change. In such a case, the Housing Director shall notify such community in writing within 60 days of receipt of such proposed change of its determination whether such proposed change meets the standards set forth in this subsection, and, in such case, the State Housing Code shall not be administered in such community, notwithstanding such amendment or change.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, §§ 1-3.)

§ 4106 Construction of terms; definitions.

(a) Words used in the present tense include the future; the singular includes the plural and the plural includes the singular. Unless otherwise expressly stated, where terms are not defined under this chapter, they shall have ascribed to them their ordinarily accepted meanings or such as the context herein may imply. Whenever the words "multi-family dwelling," "residence building," "dwelling unit," "mobile home" or "premises" are used in this chapter, they shall be construed as though they were followed by the words, "or any part thereof."

(b) The following terms are defined as listed below:

(1) Approved. — Approved, as applied to a material, device or method of construction, shall mean approved by the code official under this chapter or approved by other authority designated by law to give approval in the matter in question.

(2) Basement. — That portion of a building which is partly below and partly above grade, and having at least one half its height above grade (see "cellar").

(3) Cellar. — That portion of a building which is partly or completely below grade, and having at least one half its height below grade (see "basement").

(4) Central heating. — The heating system permanently installed and adjusted so as to provide the distribution of heat to all habitable rooms, bathrooms and water closet compartments from a source outside of these rooms.

(5) Code official. — The official who is charged with the administration and enforcement of this chapter, or any duly authorized representative. The Housing Director, or any duly authorized representative thereof, shall be the code official for the State.

(6) Community. — Any municipality or county in the State.

(7) Condemn. — To adjudge unfit for residential use or human occupancy.

(8) Condemnation. — The act of judicially condemning.

(9) Dwelling.

a. One-family dwelling. — A building containing 1 dwelling unit with not more than 5 lodgers or boarders.

b. Two-family dwelling. — A building containing 2 dwelling units with not more than 5 lodgers or boarders per family.

c. Multi-family apartment house. — A building or portion thereof containing more than 2 dwelling units and not classified as a 1 or 2 family dwelling.

d. Boarding house, lodging house and tourist house. — A building arranged or used for lodging, with or without meals, for compensation, by more than 5 and not more than 20 individuals.

e. Dormitory. — A space in a building where group sleeping accommodations are provided in 1 room, or in a series of closely associated rooms for persons not members of the same family group.

f. Hotel. — Any building containing 6 or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

g. Mobile home. — A 1-family dwelling designed for transportation after fabrication on streets and highways on its own wheels or supported by other vehicles or trailers but which is not self-propelled, and arriving at the site where it is to be occupied complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, supported on jacks or other foundations and connected to utilities and the like.

(10) Dwelling unit. — A single unit providing complete, independent living facilities for 1 or more persons, including a mobile home, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(11) Enforcement officer. — The official designated herein or otherwise charged with the responsibilities of administering this chapter, or the official's authorized representative.

(12) Exterior property areas. — The open space on the premises and on adjoining property under the control of owners or operators of such premises.

(13) Extermination. — The control and elimination of insects, rats or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping or by any other approved pest elimination methods.

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(14) Family. — An individual or married couple and the children thereof with not more than 2 other persons, living together as a single housekeeping unit in a dwelling unit.

(15) Garbage. — The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

(16) Habitable space. — Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

(17) Hotel. — See "dwellings."

(18) Housing Director. — The Director of the Delaware State Housing Authority.

(19) Infestation. — The presence, within or contiguous to a structure or premises, of insects, rats, vermin or other pests.

(20) Junk vehicle. — Any vehicle which is without a currently valid license plate or plates and is in either a rusted, wrecked, discharged, dismantled, partly dismantled, inoperative or abandoned condition. A junk vehicle shall be classified as to its condition in 1 of the 2 following categories:

a. Restorable. — A junk vehicle that is in a condition whereby repairs to same could be made to place it in operating condition without exceeding the estimated value when repaired.

b. Wreck. — A junk vehicle in such condition that it is economically unsound to restore same to operating condition considering the repairs to be made, age of the vehicle, market value of the vehicle if it were restored or in such condition that it warrants such classification.

(21) Let for occupancy or let. — To permit possession or occupancy of a dwelling, dwelling unit, rooming unit, building or structure by a person who shall be legal owner or not be the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

(22) Maintenance. — Conformance of a building and its facilities to the code under which the building was constructed.

(23) Motel. — A hotel as defined in this chapter.

(24) Multi-family (multiple) dwellings. — See "dwellings."

(25) Occupant. — Any person over 1 year of age (including owner or operator) living and sleeping in a dwelling unit or having actual possession of said dwelling or rooming unit.

(26) Openable area. — That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

(27) Operator. — Any person who has charge, care or control of a structure or premises which are let or offered for occupancy.

(28) Overcrowded. — A dwelling shall be overcrowded when its occupancy exceeds the maximum number of persons permitted in subsections (k), (l) and (q) of § 4115 of this title.

(29) Owner. — Any person, firm or corporation having a legal or equitable interest in the premises or any agent thereof.

(30) Person. — Any individual, corporation or partnership.

(31) Plumbing. — The labor, materials and fixtures used in the installation, maintenance, extension and alteration of all piping, fixtures, appliances and appurtenances.

(32) Plumbing fixture. — A receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises and demands a supply of water therefrom; or discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises; or which requires both a water supply connection and a discharge to the drainage system of the premises.

(33) Premises. — A lot, plot or parcel of land including the buildings or structures thereon.

(34) Public nuisance. — Includes the following:

a. The physical condition, or use of any premises regarded as a public nuisance at common law; or

b. Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations and unsafe fences or structures; or

c. Any premises designated as having unsanitary sewerage or plumbing facilities; or

d. Any premises designated as unsafe for human habitation or use; or

e. Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecure so as to endanger life, limb or property; or

f. Any premises from which the plumbing, heating or other facilities required by this chapter have been removed, or from which utilities such as water, sewer, gas and electricity have been disconnected, destroyed, removed or rendered ineffective, or the required precautions against trespassers have not been provided; or

g. Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or

h. Any structure or building that is in an advanced state of dilapidation, deterioration or decay; of faulty construction; overcrowded; open, vacant or abandoned; damaged by fire to the extent as not to provide adequate shelter; in danger of collapse or structural failure; and is dangerous to anyone on or near the premises.

(35) Renovation. — Work on a building and its facilities to make it conform to present day minimum standards of sanitation, fire and life safety.

(36) Residence building. — A building in which sleeping accommodations, toilet, bathing and cooking facilities as a unit are provided.

(37) Rooming house. — Any residence building, or any part thereof, containing 1 or more rooming units, in which space is let by the owner or operator to more than 5 persons who are not members of the family (see "dwellings": "boarding house").

(38) Rooming unit. — Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

(39) Rubbish. — Combustible and noncombustible waste materials, except garbage, and the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

(40) Structure. — That which is built or constructed, including without limitation because of enumeration, buildings for any occupancy or use whatsoever, fences, signs, billboards, fire escapes, chute escapes, railings, water tanks, towers, open grade steps, sidewalks or stairways, tents or anything erected and framed to component parts which is fastened, anchored or rests on a permanent foundation or on the ground.

(41) Supplied. — Installed, furnished or provided by the owner or operator.

(42) Ventilation. — The process of supplying and removing air by natural or mechanical means to or from any space.

a. Mechanical. — Ventilation by power-driven devices.

b. Natural. — Ventilation by opening to outer air through windows, skylights, doors, louvers or stacks without wind-driven devices.

(43) Workmanlike. — Whenever the words "workmanlike state of maintenance and repair" are used in this chapter, they shall mean that such maintenance and repair shall be made in a reasonably skillful manner.

(44) Yard. — An open unoccupied space on the same lot with a building extending along the entire length of street, or rear or interior lot line.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, §§ 4-6; 70 Del. Laws, c. 186, § 1.)

§ 4107 Adoption by reference.

Any community in Delaware may adopt the State Housing Code as its own municipal or county housing code by reference to this title and chapter of the Delaware Code.

(65 Del. Laws, c. 153, § 1.)

§ 4108 Enforcement authority.

It shall be the duty and responsibility of each community to enforce the State Housing Code throughout the confines of that municipality or county.

(65 Del. Laws, c. 153, § 1.)

§ 4109 Enforcement by State or community.

In the event that after 3 years subsequent to the adoption of the State Housing Code by the General Assembly a community has not undertaken to enforce this chapter, the Housing Director, acting as the code official, may begin enforcement within that community, subject to this chapter. Any community may contract with another community to act on its behalf in the enforcement of this chapter.

(65 Del. Laws, c. 153, § 1; 67 Del. Laws, c. 386, § 7.)

§ 4110 Coordination of enforcement.

Inspection of premises and the issuing of orders in connection therewith under this chapter shall be the exclusive responsibility of the code official. When, in the opinion of the code official, it is necessary or desirable to have inspections of any conditions by any other community or state agency, the code official shall arrange for this to be done in such a manner that the owners or occupants of the dwelling shall not be subjected to visits by numerous inspectors nor to multiple or conflicting orders. No order for correction of any violation under this section, when coordination of enforcement is required, shall be issued without the approval of the code official and, before issuing any such order, the code official shall obtain the concurrence of any other department or agency having jurisdiction thereover.

(65 Del. Laws, c. 153, § 1.)

Subchapter II

Minimum Conditions of Premises and Buildings

§ 4111 General provisions.

This subchapter shall describe the minimum conditions of residential premises and buildings to be used for human occupancy. Every residential building or structure occupied by humans, except as exempted by §§ 4103 and 4105 of this title and its premises shall comply

(j) *Stairs and porches.* — Every stair, porch, balcony and all appurtenances attached thereto shall be so maintained as to be safe to use and capable of supporting the loads to which it may be subjected and shall be maintained in sound condition and repair.

(k) *Windows, doors and frames.* — Every window, door and frame shall be maintained in such relation to the adjacent wall construction so as to exclude rain as completely as possible and to substantially exclude wind from entering the building.

(l) *Weathertight.* — Every window and exterior door shall be fitted reasonably in its frame and be weathertight. Weather stripping shall be used as necessary to exclude wind or rain from entering the dwelling or structure and shall be kept in sound condition and good repair.

(m) *Glazing.* — Every required window sash shall be fully supplied with glazing materials which securely hold in place window glass.

(n) *Openable windows.* — Every window, other than a fixed window, shall be capable of being opened and shall be held in position by window hardware.

(o) *Door hardware.* — Every exterior door, door hinge and door latch shall be maintained in good condition. Door locks in dwelling units shall be in good repair and capable of tightly securing the door.

(p) *Basement and window hatchways.* — Every basement or cellar hatchway or window shall be so maintained as to prevent the entrance of rats, rain and surface drainage into the structure.

(65 Del. Laws, c. 153, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4114 Interior structure.

(a) *In general.* — The interior of a structure and its equipment shall be maintained structurally sound and in a sanitary condition so as not to pose a threat to the health and safety of the occupants and to protect the occupants from the environment.

(b) *Structural members.* — The supporting structural members of every building shall be maintained structurally sound, not showing any evidence of deterioration which would render them incapable of carrying the imposed loads.

(c) *Interior surfaces.* — Floors, walls, including windows and doors, ceilings and other interior surfaces shall be maintained in good, clean and sanitary condition.

(d) *Lead-based paint.* — Lead-based paint with a lead content of more than 0.5 percent shall not be applied to any interior or exterior surface of a dwelling or dwelling unit, including fences and outbuildings upon any premises.

(e) *Bathroom and kitchen floors.* — Every toilet, bathroom and kitchen floor surface shall be constructed and maintained so as to permit such floor to be easily kept in a clean and sanitary condition.

(f) *Free from dampness.* — Cellars, basements and crawl spaces shall be maintained free from standing water so as to prevent conditions conducive to decay or deterioration of the structure.

(g) *Sanitation.* — The interior of every structure shall be maintained in a clean and sanitary condition free from any accumulation of rubbish, refuse or garbage. Rubbish, garbage and other refuse shall be properly kept inside temporary storage facilities.

(h) *Public halls and stairways.* — Garbage or refuse shall not be allowed to accumulate or be stored in public halls or stairways.

(i) *Insect and rat harborage.* — All structures shall be kept free from insect and rat infestation, and where insects or rats are found they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation.

(j) *Exit doors.* — Every door available as an exit shall be capable of being opened easily from the inside.

(k) *Exit facilities — Adequacy.* — Stairs, porches, railings and other exit facilities shall be adequate for safety.

(l) *Same — Maintenance.* — All interior stairs and railings and other exit facilities of every structure shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting the anticipated loads.

(65 Del. Laws, c. 153, § 1.)

§ 4115 Light, ventilation and space requirements.

(a) *In general.* — All spaces or rooms shall be provided sufficient light so as not to endanger health and safety. All spaces or rooms shall be provided sufficient natural or mechanical ventilation so as not to endanger health and safety. Where mechanical ventilation is provided in lieu of the natural ventilation, such mechanical ventilating system shall be maintained in operation during the occupancy of any structure or portion thereof.

(b) *Light in habitable rooms.* — Every habitable room, except kitchens, toilet rooms, basement or cellar rooms and interior rooms of townhouses and row houses, shall have at least 1 window facing directly to the outdoors, a court or a porch. Every habitable room, except kitchens and toilet rooms, shall have at least 1 door or window which can be opened to adequately ventilate the room. Kitchens, toilet rooms without windows, basement or cellar rooms and interior rooms of townhouses and row houses shall have natural or mechanical ventilation.

(c) *Common halls and stairways.* — Every common hall and stairway in every building, other than 1-family dwellings, shall be adequately lighted at all times with an illumination of at least a 60 watt light bulb. Such illumination shall be provided throughout the normally traveled stairs and passageways.

(d) *Other spaces.* — All other spaces shall be provided with natural or artificial light of sufficient intensity and so distributed as to permit the maintenance of sanitary conditions and the safe use of the space and the appliances and fixtures.

(e) *Toilet rooms.* — Every bathroom and water closet compartment shall comply with the light and ventilation requirements for habitable rooms as required by subsection (b) of this section except that a window shall not be required in bathrooms or water closet compartments equipped with an approved mechanical ventilation system.

(f) *Cooking.* — Primary cooking facilities shall not be permitted in any sleeping room or dormitory unit, except for efficiency apartments.

(g) *Separation of unit.* — Dwelling units shall be separate and apart from each other. With the exception of cribsrooms or rooms accommodating persons with disabilities, sleeping rooms shall not be used as the only means of access to other sleeping rooms.

(h) *Privacy.* — Hotel units, lodging units and dormitory units shall be designed to provide privacy and be separate from other adjoining spaces.

(i) *Common access.* — A habitable room, bathroom or water closet compartment which is accessory to a dwelling unit shall not open directly into or be used in conjunction with a food store, barber or beauty shop, doctor's or dentist's examination or treatment room or similar room used for public purposes.

(j) *Basement rooms and cellar rooms.* — Basement and cellar rooms partially below grade shall not be used for sleeping purposes unless the basement and cellar room (or rooms) is (are) within the specifications for sleeping rooms as provided for in this chapter.

(k) *Dwelling units.* — Every dwelling unit shall contain a minimum gross floor area of not less than 150 square feet for the first occupant, and 100 square feet for each additional occupant. The floor area shall be calculated on the basis of the total area of all habitable rooms.

(l) *Area for sleeping purposes.* — Every room occupied for sleeping purposes by 1 occupant shall contain at least 64 square feet of floor area.

(m) *Overcrowding.* — If any room used for residential purposes is overcrowded as defined in § 4106(27) of this title, the code official may order the number of persons sleeping or living in said room to be reduced.

(n) *Prohibited use.* — It shall be prohibited to use for sleeping purposes any kitchen, nonhabitable space or public space.

(o) *Minimum ceiling heights.* — Habitable rooms shall have a clear ceiling height over the minimum area required by this chapter at not less than 7 feet, 4 inches, except that in attics, basements, or top half-stories the ceiling height shall be not less than 7 feet over not less than one-third of the minimum area required by this chapter when used for sleeping, study or similar activity. In calculating the floor area of such rooms, only those portions of the floor area of the room having a clear ceiling height of 5 feet or more may be included.

(p) *Minimum ceiling heights in mobile homes.* — Habitable space in a mobile home shall have a minimum ceiling height of 7 feet over 50 percent of the floor area, and the floor area where the ceiling height is less than 5 feet shall not be considered in calculating floor area.

(q) *Required space in mobile homes.* — Every mobile home shall contain a minimum gross floor area of not less than 150 square feet for the first 2 occupants, and 100 square feet for each additional occupant.

(65 Del. Laws, c. 153, § 1; 78 Del. Laws, c. 179, § 380.)

§ 4116 Plumbing facilities and fixtures requirements.

(a) *In general.* — Every dwelling unit shall include its own plumbing facilities which are in proper operating condition, can be used in privacy and are adequate for personal cleanliness and the disposal of human waste.

(b) *Water closet and lavatory.* — Every dwelling unit shall contain a lavatory and a water closet supplied with cold running water. The water closet shall not be located in a habitable room. The lavatory may be placed in the same room as the water closet, or, if located in another room, the lavatory shall be located in close proximity to the door leading directly into the room in which said water closet is located. The lavatory shall be supplied with hot and cold running water.

(c) *Bathtub or shower.* — Every dwelling unit shall contain a room which affords privacy to a person in said room and which is equipped with a bathtub or shower supplied with hot and cold running water.

(d) *Sink.* — Every dwelling unit shall contain a kitchen sink apart from the lavatory required under subsection (b) of this section and shall be supplied with hot and cold running water.

(e) *Rooming house.* — At least 1 water closet, lavatory basin and bathtub or shower properly connected to an approved water and sewer system and in good working condition shall be supplied for each 4 rooms within a rooming house, wherever said facilities are shared. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times.

(f) *Hotels.* — Where private water closets, lavatories, and baths are not provided, 1 water closet, 1 lavatory and 1 bathtub accessible from a public hallway shall be provided on each floor. Each lavatory, bathtub or shower shall be supplied with hot and cold water at all times.

(g) *Toilet rooms and bathrooms — Privacy.* — Toilet rooms and bathrooms shall be designed and arranged to provide privacy.

(h) *Toilet rooms and bathrooms — Direct access.* — Toilet rooms and bathrooms shall not be used as a passageway to a hall or other space or to the exterior. At least 1 toilet room or bathroom in a dwelling unit shall be accessible from any sleeping room without passing through another sleeping room.