

MILFORD CITY COUNCIL
MINUTES OF MEETING
June 27, 2016

A Joint Meeting of the City of Milford Community Affairs and Police Committees was held in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street, Milford, Delaware on Monday, June 27, 2016.

PRESIDING: Police Committee Chairman James Burk

IN ATTENDANCE: Committee Members:
Councilman Owen Brooks Jr. (Police)
Councilman James Starling (Community Affairs)

Mayor Bryan Shupe

City Manager Eric Norenberg & City Clerk Terri Hudson

Chairman Burk called the Joint Committee Meeting to order at 5:30 p.m.

City Planning Coordinator Rob Pierce was also present.

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

Mr. Pierce recalled reviewing this ordinance in March though some minor changes have been made. He stated that he used the Town of Smyrna's business license ordinance and modified it to meet our needs. He said Smyrna implemented this January 1st and provided a six-month window for businesses to obtain their licenses.

Mr. Burk reported that in Dewey Beach, there is a substantial fine to encourage businesses to obtain their licenses. A business may disregard obtaining a business license if the fine is less than the cost of the license.

Mr. Pierce then reviewed the following highlights of the ordinance:

Timing

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

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*

Code Compliance

- *Require zoning certificate prior to approval.*
- *Nonconforming existing businesses*

Exemptions

- *Suspension of License*
- *Appeals Procedure*
- *City Council, Board of Appeals*

It was agreed that the fee should only be prorated once a year and that rounding it up to \$130 should be considered to make that process easier.

Mr. Burk confirmed the business license can be suspended for not being in compliance of the ordinance, being more than

sixty days late in the renewal of the license, violations of the city code or state law or fire marshal or public safety authorities recommendations that the business cease operations.

In terms of appeals, both the vendor and contractor licenses have the right to appeal to City Council. Our board of appeals is set up more for contractor/building construction issues.

Mr. Pierce asked the committee's opinion; Mr. Burk prefers the appeal go to City Council.

Mayor Shupe agrees we should do this, but feels the first complaint will be that this has not been required in the past and what does the businesses get for it. He feels we should be able to provide a couple of examples. Mr. Burk pointed out it was discussed how this actually will protect other businesses and citizens by assuring all businesses are legitimate.

Mr. Starling feels it is more appropriate for appeals to go before the Board of Appeals.

Mr. Brooks asked if an oil company delivering oil would need a license or a plumber from out of town. Mr. Pierce recommends it be tailored so that council is comfortable with the requirements. His intent was that every brick and mortar business had a license.

Mr. Burk said he worked for municipalities where UPS, food distributors and other services were required to have a business license; otherwise it is unfair to the brick and mortar businesses and not an across-the-board requirement.

When asked if the chamber has been informed, City Manager Norenberg said one of the next steps will be to present this to the chamber and DMI though they wanted some direction from the committee first. He further explained that some jobs such as realtors, that come and go and do not have a brick and mortar business, are still required to be licensed in a number of municipalities. A main goal is to make sure the business is properly zoned and if they have any sort of discharge or sewer system, we know what they are discharging and they are aware of our ordinances. This prevents someone from starting a business before the city suddenly shows up to tell them it is an illegal use in an improper zone or that they are dumping something illegal into our system. He feels this will be particularly helpful to new businesses by discovering a problem before it is too late.

Mr. Pierce explained there have been instances of businesses that have done a total interior renovation and we have later found out there were fixtures that have been ripped out. They are then required to come back through with a revised building permit based on what was found. They could ultimately end up losing money because we cannot prove what they have already altered. They may have to apply for a land use application as well.

The planner said the department has been much more proactive than in the past and is working more as a team to catch new businesses that want to retrofit old buildings such as a restaurant that opens with only five parking spaces and a substandard entrance. Having the license will really help prevent a lot of those issues.

He noted that some of these roaming businesses that perform services in town but do not have an actual business may fall under the contractor permits though we need to consider any that should be exempt.

Mayor Shupe recalled when a business called him to inform him that someone had come into his store and tried to pay with counterfeit money and asked if that information could be provided to other businesses. He referenced the Code Red system the police use in emergencies and asked that we consider a similar system that could be used for this type of information. Having this business database would allow that.

Mr. Burk pointed out that one of the city's responsibilities is to protect its citizens. By implementing a business license, we will know they have a state business license and are up to fire marshal and health code standards. To him it is a reasonable argument when a business asks why they are paying \$125 or \$130. He feels they will be the ones that will report an unlicensed business in most cases.

The City Manager commented that the city is often asked for a list of businesses and if an export of all licensed businesses

is put on our website, anyone could check that list to confirm they are legitimate. He feels that listing the name, address and contact information is a side benefit.

When asked what they need from the committee, Mr. Norenberg asked for some recommendations as far as the reach in terms of starting with brick and mortar. Mr. Burk stated he is not ready to make a recommendation and prefers to have the chairperson's opinion.

Mr. Norenberg reported that they plan to take this to the Chamber of Commerce in July and August but any more thoughts on the draft would be helpful. They will then bring it back to the Community Affairs Committee before it is taken to City Council.

Mr. Starling feels that it will be difficult to police any roaming business and some may only be in Milford for two hours a year.

When asked if there have been problems or concerns reported from other agencies, Mr. Piece said there have been some businesses that open that are not in the proper zoning. He feels this will definitely help with the zoning violations and prohibited uses, as two examples.

Mr. Brooks recommends checking with other towns to see who is required to have business licenses.

Mr. Burk feels there are a number of answers to questions about why we are implementing this business license, including the protection of the citizens and preventing businesses from having to shutdown because of improper zoning or prohibited uses.

Chief Brown said this will help the police because there are a number of businesses in Milford that conduct criminal enterprises/activity. He recalled the massage parlor situation where women were brought in for prostitution. By law, the women are the ones being arrested and the business simply discards them and brings in other woman which allows the enterprise to continue. He is hoping that their business license could be revoked in that situation. Another possible reason to ask for a business to be shutdown is if someone were caught selling drugs there.

He expressed concern with the appeal process and recommended a stronger stance than the way it is currently written. For example, the prostitution problem could be remedied by getting rid of the woman that was arrested, even though the same activity continues. The same could apply to a drug arrest. The person arrested could be fired, but the drug sales could continue though the business would claim the problem was taken care of.

Chief Brown then referenced the false alarm ordinance where businesses are fined beginning with the fourth alarm in a calendar year. They track them by address though that businesses may move to another location which creates a problem with the number of violations. Having access to a business license database will provide that information and allow his staff to cross reference the information.

On the other hand, a store could go out of business at one location and a new business moves in. Though they may have their first false alarm, it is showing up as the third or fourth as a result of the former business that was there. This database would help resolve those issues.

Mr. Pierce pointed out it would also provide emergency contact information for each business. Chief Brown stated that his department has that information for most business, but it is difficult to keep current and this would definitely help.

When asked what Smyrna perceives as a business, Mr. Pierce explained it is defined as 'any person engaged in the sale of goods, services, retail, wholesale, service rental, food service, professional services, etc.'. He said it even states that the license has to be displayed in a public place or carried on the person. However, he is unsure if they require vendor permits as Milford issues for the transient merchants who solicit door to door.

Mr. Burk recommends reviewing the business definition of other municipalities.

Mr. Pierce pointed out that it will be more difficult to police an out-of-town business that goes to a house to do some type of work. They catch unlicensed contractors when they are riding around town, but going into a store and looking around for the license is a much easier process.

It was agreed that having the business listed publicly will help a great deal; Mayor Shupe agrees that it will be self-policed in most cases.

Mayor Shupe said when they opened their business, they were surprised the city did not require a business license. Mr. Pierce agreed adding that we frequently receive calls from people who ask to apply for a business license because the majority of towns require it.

When asked about the appeal process, Mr. Burk noted that Mr. Starling prefers it goes through the Board of Appeals and the chairman recommends City Council. He prefers the Community Affairs Chair weigh in before a decision is made.

Mr. Starling said another possibility is to have it come before council and then go to the Board of Appeals. After further discussion and the consideration of political implications, it was agreed it should go to the Board of Appeals.

When asked if that board is active, Mr. Norenberg recalled that we recently passed an ordinance reconstituting the Board of Appeals but have not received any applications. He suggests the Board of Appeals be discussed about making it something more appropriate with all permits.

Proposed Code Amendment/Chapter 107/Contractors

Mr. Pierce then discussed the proposed amendment to the contractor license ordinance in order to stay consistent with the proposed business license and based on the budget hearing recommendations.

The following changes are proposed:

**Increase annual fee from \$100 to \$125 (or rounding it to a whole number)*

**License fee would be prorated after July 1 of each year.*

The planner reported that the fee would only be prorated twice a year though we are currently prorating them quarterly.

Currently the appeals under this chapter go to City Council; if the business license is changed to Board of Appeals, Mr. Pierce recommends this mirror that ordinance.

Mr. Burk agrees but wants everyone present to get an across-the-board consensus.

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

The following changes are proposed:

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.*

Mr. Pierce noted that in order to make this consistent with the other fees, there will be an increase in the licensing fee which will also be prorated after July 1st. Other changes such as the inclusion of food trucks and similar vehicles, as well as some prohibited acts, were also added.

There was also a need to clarify the prohibition of food trucks setting up on residential lots and residential areas. It can be done in a commercial setting with the permission of the property owner. Language was added to allow a temporary food truck at a private event at a home, but they would not be allowed to sell to the general public.

Mr. Norenberg assumes that food trucks are already registered in Milford; however, the city does not want to register the craft vendors, displays and booths. Therefore, it was agreed to exempt those events as long as the event is city-approved and occurs on city lands/right-of-ways similar to the Riverfest and Bug and Bud Festival. Vendors other than that will be required to get a permit.

The City Manager confirmed that the state health department is the only other agency with any jurisdiction over food trucks and we will ensure they are in compliance with their regulations. Other than that, permits will be issued in line with the business license and contractor permit.

Mr. Burk suggests a requirement that any permission needed from a property owner must be in writing and available on the truck. He feels that there could be an excuse if someone were setting up on vacant land and the food truck owner did not know how to get in touch with the owner.

Mr. Starling asked if people can randomly set up yard sales on vacant lots and referenced an area off the highway where this is done frequently. Mr. Burk said he has the same problem in Kent County but no one works the weekend when this occurs. It was confirmed there is no yard sale ordinance in Milford so the only other option would be to go after them with a criminal charge for yard sales.

Mr. Pierce said an occasional yard sale is not a problem though an on-going situation will be covered under the business license ordinance. It then becomes a retail business on a residential lot and the person is in violation of our zoning ordinance.

It was agreed that yard sales, for the most part, are not a problem and do not need to be addressed at this time.

Proposed Code Amendment/Chapter 180/Residential Rental Operating License

Mr. Pierce recalled when this matter was discussed this past March by this committee. He stated that basically this will add language similar to some crime free housing programs. The main focus is getting the landlords/tenants to sign an amendment through a lease agreement.

Under this ordinance amendment, the city would require the landlord to terminate the lease for the following reasons:

**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.

Mr. Burk explained there is a long, legal process for a landlord to evict a tenant. If they are violating city ordinances, that at least helps get the ball rolling to get rid of the problem tenants. For any landlord uninterested in getting rid of those tenants, it gives the city the authority to enforce it.

Chief Brown asked if this could be added to the Disorderly Premise Ordinance already in place. The planner feels that a reference to the Disorderly Premise Ordinance could be added.

Mr. Brooks asked the planner if he has read Milford's code where it talks about the gatekeeper. Mr. Pierce explained the draft he created basically inserted language into the city's rental code. Mr. Brooks recalled a fire that occurred at a house that was overcrowded during which time the fire company was unable to determine who was responsible for the people in the house and how many residents were living there. As a result, they had no idea if they had everyone out or if someone was still in the house.

Mr. Norenberg said that in addition to the crime free housing, the intent of this amendment is to strengthen the registration process. Right now the requirement to identify who is living at the house is not clear. Mr. Pierce agreed that it only asks for the total number of persons living in the rental. Their intent is to obtain the maximum occupancy of each unit with a not-to-exceed amount. In that way, the tenant will be aware there cannot be more than a certain number living there based on state code.

Mr. Pierce also reported that the city will require a list of tenant names and any minors.

Mr. Burk questioned the city keeping a data based of everyone living in a rental unit. Mr. Pierce noted it is currently on our application though he agrees it has not been put to good use in the past and it has never been entered in a database. The person's name on the utility account is the only reference for the city.

Mr. Burk feels that is a big job considering people come and go. In addition, there is subletting. Mr. Pierce feels that if they are obligated by this addendum that only an 'x' amount of people can live there, and it is later determined there are forty people living there at the time a rental inspection is done, we can force them to honor the city code and have the lease terminated without a warning.

They are trying to help with enforcement of overcrowding which he agrees is going to be difficult to control. However, he feels this provides some tools to assist with the problem.

Mr. Burk asked how to prove overcrowding; at this point, he feels this should be reviewed by the city solicitor and that we may be going beyond the landlord/tenant code. Mr. Pierce explained the landlord has the ability to terminate the rental agreement for violations of the zoning ordinance. He said that Harrington has a very similar ordinance that was adopted two to three years ago.

Mr. Pierce pointed out that Solicitor Rutt will be reviewing all the ordinances though he wanted some feedback prior to presenting this to City Council.

Mr. Norenberg recalled the review back in March at which time the intent was to introduce the crime free housing program concept. He explained it is not as much an overcrowding issue but more geared toward the inappropriate behavior of tenants. Landlords, who do not get rid of bad tenants and create problems for neighbors and the police, will be required to add the addendum to their leases so their tenants understand that if they do not remain crime free, they will be evicted. When tenants start to understand that bad behavior is not going to be tolerated, they will move elsewhere. This is an attempt to get rid of those situations in Milford.

Overcrowding is still an issue according to the City Manager, and though not the main thrust, it is a potential violation.

Mr. Pierce said that this will help those landlords remove tenants if there is a problem though they already have the ability to file for summary possession if they violate municipal or county laws.

In conclusion, Mr. Burk's recommendation is that our solicitor review this thoroughly as he does not feel it is appropriate for the city to go between landlords and tenants.

Mr. Pierce lastly referenced the two convictions of any occupant for a violation of the disorderly dwelling occurring within the three-consecutive-month period. He suggests Chief Brown's staff consider how they want the unlawful act section written before it is inserted into the ordinance. The planner feels the police have a better idea of the problems and what needs to be controlled.

There was a concern expressed over the time frame and the fact that it is based on convictions. Mr. Pierce again recommended that Chief Brown and his staff modify the language to be more suitable. Mr. Burk pointed out the court system can take a long time so the time frame is going to be difficult to put in writing.

Several scenarios were discussed though consideration will be given to new language.

Sidewalk Violations

Mr. Burk asked if code violations are being issued to property owners whose sidewalks are in disrepair. Mr. Pierce explained the sidewalk ordinance states there an evaluation is needed by the city engineer in addition to some other requirements. He feels it needs to be a joint effort staff between the code enforcement staff and the public works and street departments. Combining those forces may provide the ability to cover a larger area and determine which sections of town to address first. He noted there are provisions in the sidewalk ordinance to lend property owners that must be paid back. However, a pool of money is needed as well as the affordability to accommodate the provision.

It was agreed that can be addressed once the new Public Works Director is on board.

Mr. Burk recommends changing the language in the code because we no longer have a city engineer. Mr. Norenberg reiterated that is one of the items that can be discussed with the Public Works Director. Any aspects of the code that need changing can be addressed at that time in order to come up with the best approach.

There being no further business, the Joint Police and Community Affairs Committee Meeting adjourned at 6:48 p.m.

Respectfully submitted,



Terri K. Hudson, MMC
City Clerk/Recorder