

Sponsor: Councilwoman Brown
First Reading: 12/07/15
Second Reading: 12/21/15
Third Reading: 01/04/16
Ord. No.: 019-15

AN ORDINANCE TO AMEND THE TOWN CODE OF THE TOWN OF SMYRNA TO
CREATE A NEW CHAPTER 49 – BUSINESS LICENSES TO REQUIRE BUSINESS
LICENSES FOR ALL BUSINESSES AND PROFESSIONAL ESTABLISHMENTS
OPERATING IN THE TOWN OF SMYRNA AND PROVIDING PENALTIES FOR THE
VIOLATION THEREOF

WHEREAS, the Town Council of the Town of Smyrna is authorized pursuant to section 4.2.38 of the Town Charter to “license, tax and collect fees of such various amounts as the Town Council from time to time shall fix from any individual, firm, association or corporation carrying on or practicing any business, profession or occupation, or renting out any real or personal property, within the limits of the Town”;

WHEREAS, in the opinion of the Town Council of the Town of Smyrna, 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 Town of Smyrna; and

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

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

Section 1. Amend the Town Code of the Town of Smyrna by creating a new Chapter 49 – Business Licenses as follows:

Chapter 49. BUSINESS LICENSES

Sec. 49-1. Purpose.

The Town 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 town codes governing business operations, provide necessary approval, enforcement, and compliance procedures, and for other public purposes.

Sec. 49-2. 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.

Sec. 49-3. Business licenses required.

- (1) *Business licenses required.* Commencing January 1, 2016, no person shall operate, maintain or otherwise be engaged in any business within the boundaries of the Town of Smyrna without having first received a business license issued by the town for the calendar year in which the business is operating. All businesses in existence within the boundaries of the town prior to January 1, 2016 shall obtain a business license prior to June 1, 2016, which license shall be valid for the year 2016.
- (2) *License period; renewals.* Business licenses shall be issued for each calendar year and shall expire December 31 of the year for which the business license was issued, regardless of when during the calendar year the license was issued. Licenses shall be renewed on or before January 1 of each year.
- (3) *Display of business license.* The business license shall be displayed in a public place within the establishment or, if applicable, worn or carried by the person providing the service in a manner that is visible at all times to the public.
- (4) *Good standing requirements.* The town's good standing requirements and procedures outlined in Chapter 1 ("General Provisions"), section 1-14 ("Good Standing Requirements") shall pertain to the issuance and renewal of business licenses for businesses seeking to operate in the town.
- (5) *Multiple business locations.* Each separate location or branch of the same business requires a separate business license as though it were a separate business.
- (6) *Transferability.* A business license may not be transferred from one party to another or from one location to another location of the same business. If the nature of the licensee's business activities substantially changes after the issuance of a business license, a new business license shall be required.

Sec. 49-4. Business license application.

Every application for a business license submitted to the town 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 Town of Smyrna business license; and
- (9) A statement that the business has complied with and will continue to comply with all codes and ordinances of the town.

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

Sec. 49-5. Business license application review.

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

Sec. 49-6. Business license fees; delinquencies.

The fee for a business license shall be set by the Town Manager each year as part of the Town 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 49-10, however, no additional penalties shall continue to be assessed under this section.

Sec. 49-7. Code compliance; zoning certificate.

A business operating in the town shall at all times be in compliance with all town codes and ordinances. Any business not in existence in the town as of January 1, 2016 shall not be issued its initial business license and shall not initiate its business activities until it has obtained a certificate of zoning compliance ascertaining the permissibility of the proposed business use in the location where such activity is to take place.

Sec. 49-8. 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 town to operate within the town limits.
- (3) Charitable, religious, educational, or public service facility, social association or club, or governmental agency except to the extent that such operate a separate retail facility, provided that any third parties operating on behalf of any such entities shall not be exempted from obtaining a business license.
- (4) Exhibitor in a museum, the Smyrna Library, the Smyrna Opera House, an educational facility, or other public building where such exhibition is part of a limited scheduled event or show.
- (5) Yard or garage sales, book sales, and auctions where not part of a regularly recurring or continuous business activity.
- (6) Sale of agricultural or nursery items grown on the premises of the property owner.
- (7) Any activities permitted pursuant to a current peddler's license or otherwise exempt from obtaining a peddler's license as outlined in Chapter 50 – Peddlers and Solicitors.
- (8) Construction activities for which a license is required and has been secured in accordance with Chapter 18 (“Buildings and Building Regulations”), Article XIX (“Licensing”), Division 1 (“License Required for Building 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 Article XI (“Rental Properties”).

Sec. 49-9. Inspection by town officials.

The town 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 town codes. All persons authorized by this chapter to inspect businesses shall have the authority to enter the premises to inspect at all reasonable times.

Sec. 49-10. Suspension of business license; penalties.

- (1) *Suspension of business license.* The town manager may order a business to cease operations in the town 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 Smyrna Town 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 town 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 Town Council. The written notice shall be either personally delivered or sent via certified mail, return receipt requested, to the business. If the business does not remedy the violations or appeal the determination of the town manager within the prescribed time period, the business shall not be permitted to operate in the town 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 Town 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 town, and the town may institute a civil suit or use any other lawful methods authorized by the Town Charter or the laws of Delaware to recover any unpaid fee.

Sec. 49-11. Appeals procedures.

The Town Council shall provide any business appealing a determination of the town manager with 15 business days' written notice of the date, time, and place at which the Town 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 Town Council meeting. The filing of an appeal shall stay any enforcement action by the town 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 Town Council. If the Town Council finds against the business, the business shall have five (5) business days after the decision of the Town Council to remedy the violations before the town 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 Town Council finds in favor of the business. If the Town Council finds against the business, the Town 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 Town Council and (b) the Town Council finds the appeal was filed by the business in good faith.

Section 2. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town 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 Town Council's intent.

Section 3. This Ordinance shall become effective immediately upon its adoption by the Town Council.

SYNOPSIS

This ordinance requires businesses operating in the Town of Smyrna to obtain an annual business license. The business license fee will be set annually by the Town Manager as part of the Fee Schedule. Business licenses must be displayed at the business location and cannot be transferred. The ordinance specifies what information must be included on a business license application and prescribes penalties and appeals procedures for violations of the terms of the ordinance. This ordinance authorizes the Town to perform inspections as needed to enforce the ordinance, and provides exceptions for certain types of business that are not required to obtain a business license.

This will certify that this is a true and correct copy of this ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2016.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this ordinance was published in the "Smyrna/Clayton Sun Times" on _____, 2016 and posted at the Town Hall on _____, 2016.

So Certifies:

Town Clerk