

First Reading: 11/16/09
Second Reading: 02/16/10
Third Reading: 04/05/10
Sponsor: _____
Ord. No.: 008-09

AN ORDINANCE TO AMEND CHAPTER 1 ("GENERAL PROVISIONS") OF THE TOWN CODE OF THE TOWN OF SMYRNA TO ADD A NEW SECTION TO THE CHAPTER REQUIRING GOOD STANDING IN ORDER TO OBTAIN ANY LICENSE, PERMIT, UTILITY SERVICE, OR DO ANY BUSINESS WITH THE TOWN OF SMYRNA

WHEREAS, it is, in the opinion of the Town Council of the Town of Smyrna, in the best interest of the property owners and residents of the Town of Smyrna to amend Chapter 1 ("General Provisions") to require good standing with the Town of Smyrna for anyone requesting any permit, license, utility service, or to engage in business with the Town of Smyrna; and

WHEREAS, the Town Council of the Town of Smyrna has authority to "provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the town and its inhabitants" pursuant to Section 4.2.25 of the Town Charter;

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Chapter 1 ("General Provisions") of the Town Code of the Town of Smyrna be and hereby is amended as follows:

Section 1. Amend Chapter 1 by adding a new Section 1.14 GOOD STANDING REQUIREMENTS, as follows:

Sec. 1-14. Good Standing Requirements.

1-14.1 *Definitions.*

(a) *Applicant.* Any person, partnership, LLP, LLC, firm, corporation or other legal entity requesting a town service, a Town license or permit, or seeking to engage in business dealings with the Town.

(b) *Business Affiliation.* A significant business association including by way of example, a parent or subsidiary business entity, a joint venture, or any business management arrangement under which the owners, operators, or managers of one legal entity substantially control another legal entity.

(c) *Business Dealings.* Any business arrangement between an applicant and the Town, including, but not limited to, any contractual agreement with the Town and/or the submission of any bid proposal.

(d) *Financial Interest In.* An applicant has a financial interest in another legal entity when it owns in excess of 51% of the stock, partnership interests, or equity of such entity.

(e) *Good Standing.* A property owner and an applicant shall be in "Good Standing" where the property owner, the applicant, and any legal entity the applicant has a financial interest in or a business affiliation with, are:

(1) Current in the payment of all monies owed to the Town, including, but not limited to:

(i) Property taxes.

(ii) Escrow payments.

(iii) Public utility (e.g. electric, water, sewer, trash) charges, and/or connection and/or disconnection charges, etc.

(iv) License fees.

(v) Permit fees, including building permits, building code and inspection fees.

(vi) Liens placed on properties.

(vii) Special assessments.

(viii) Interest, penalties, court costs and/or attorney's fees if applicable in any of the above listed obligations.

(2) Not in breach of any contractual obligation with the Town.

(3) Not in violation of any Town ordinance or regulation.

(f) *Property Owner*. The owner of record on the deed validly recorded in the New Castle County or Kent County Office of the Recorder of Deeds for the property where a town service is being requested.

(g) *Town Service*. Town services include, but are not limited to: (a) any Town permit, license, or approval, including, but not limited to, any site plan or subdivision plan review, a building permit, certificate of occupancy, construction inspection, building code plan review, and/or license, annexation request, connection or installation of utilities, and/or approval of a subdivision, rezoning, conditional use, variance, and/or special exception; and (b) any public utility or other service provided by the Town including but not limited to electric, water, sewer, or solid waste removal.

1-14.2 *Disclosure Requirements*. An applicant shall disclose the names of all legal entities or properties in which the applicant has any financial interest or business affiliation with, including any other information necessary to enable the Town Staff to determine that the applicant is in good standing. The applicant shall disclose all names he/she may have previously used when doing business with or within the Town.

1-14.3 *Issuance of Town approvals dependent on being in good standing*. Except as provided in 1-14.8, an applicant and property owner must be in good standing before the applicant or property owner can receive any town service or enter into a business dealing with the Town. Good standing shall not be found unless the obligations required for good standing in 1-14.1 have

been satisfied in full. Good standing may be found where a binding agreement that is acceptable to the Town has been entered into between the Town and the applicant and/or property owner for the payment of all outstanding obligations.

1-14.4 *Breach of contractual obligations with the Town; Outstanding Violation of Town Ordinance or Regulation.* Any applicant that is not in good standing because the applicant (or a legal entity in which the applicant has a financial interest or business affiliation with) is either: (a) in existing breach of a contractual obligation with the Town or (b) in existing violation of a Town ordinance or regulation and which has not remedied the breach or corrected the violation, pursuant to written notice from the Town, within ten (10) business days following the date such notice was mailed or delivered to the applicant or to the legal entity in which the applicant has a financial interest or business affiliation with (or within such additional reasonable time under the circumstances as determined by the Town Manager), in addition to any other penalties or remedies authorized under any applicable contract, ordinance, or regulation, shall not be permitted to enter into another contract with the Town for a period of two (2) years from the date notice of the breach or violation was given unless public necessity, as determined by the Town Council, requires.

1-14.5 *Procedure.*

(a) All Directors and/or Supervisors of Town departments or their designees responsible for approving business dealings with the Town or granting town services shall, before approving such business dealings or town services, make all reasonable efforts to determine that the applicant and the property owner are in good standing.

(b) If an applicant or property owner is not in good standing, the Director/Supervisor shall, in writing, deny the town service or business dealing until the requirements outlined in the written denial necessary for good standing have been satisfied. Failure by the

appropriate Director/Supervisor to issue such written denial within ten (10) business days from the Town's receipt of the request for service or to enter into a business dealing with the Town shall constitute a determination that the applicant and property owner are in good standing as to the request at issue.

(c) Applicants and/or property owners who were initially determined to not be in good standing must have written confirmation from the Town Director of Finance (or his/her designee) indicating that the applicant and/or property owner has satisfied all outstanding obligations or has entered into a binding agreement with the town and is now in good standing before any business dealing or town service requested by the applicant will be approved by the Town.

(d) Phased Development. Where an applicant is a land developer or general contractor with an inventory of development properties within the Town and is seeking a Town service in order to construct, offer for sale, or sell a residential or commercial lot or building to a first purchaser, the applicant need not be current in the payment of all monies owed to the Town, but only in the payment of all monies owed to the Town in connection with that specific development phase wherein the lot or building is located; provided that nothing herein shall alter the requirements that such applicant is not in breach of any contractual obligation with the Town or that such applicant shall not be in violation of any Town ordinance or regulation.

1-14.6 *Appeals.* Any applicant who receives a written denial of a town service or to enter into a business dealing with the Town from a Town official may appeal that denial in writing to the Town Manager within five (5) business days of such denial. The Town Manager shall thereafter hold a hearing at which said applicant shall be permitted to provide proof that such denial is based on incorrect information or is not appropriate as to that applicant, and that the applicant is in good standing.

1-14.7 *Public Bidding: Special Procedure.* Bids for Town contracts shall only be awarded to applicants in good standing. Requests for bids published by the Town shall indicate that contracts will not be awarded to any applicant not in good standing and recommend that potential applicants promptly request a determination of their good standing prior to submitting a bid. The Town will notify an applicant within 2 business days of receiving a request for determination of good standing and in no event no later than two (2) business days prior to opening the submitted bids if the applicant is not in good standing, and any applicant not in good standing shall cure the default by the date the Council awards the bid. Any applicant not in good standing at the time the Council awards a bid shall automatically be disqualified from receiving the contract.

1-14.8 *Emergency Exception.* This ordinance shall not apply to a property owner or occupant when the property owner or occupant is requesting town services to remedy an emergency condition substantially affecting the habitability or safety of a structure or equipment on the property, such as, but not limited to, a lack of hot water, heat, water or electricity. The provisions of this section shall in no way affect the requirement that an applicant for a town service that is not a property owner or the occupant of the property must be in good standing to obtain a town service to remedy an emergency condition.

SYNOPSIS

This ordinance amends Chapter 1 of the Town of Smyrna Town Code to require all applicants requesting town services or seeking to engage in business dealings with the Town to be in good standing with the Town before such requests shall be granted. This ordinance defines town services as, among other things, licenses, permits, fees, zoning requests, and public utility services. For an applicant to be in good standing, the applicant and any legal entity the applicant has a financial interest in or business affiliation with must not have any outstanding obligations to the Town such as, but not limited to, property taxes, escrow payments, license fees, permits fees, breached contracts with the Town, or violations of a Town

ordinance or regulation. Applicants must disclose all names or other information necessary to verify that the applicant is in good standing. All obligations must be completed in full for an applicant to be in good standing. A provision is included to allow for treatment of phased developments whereby a developer or general contractor must be in good standing for the phase of a development where the lot or building is located. An applicant not in good standing because of a breached contractual obligation with the Town or a violation of a Town ordinance or regulation shall not be permitted to enter into any contractual agreement with the Town for a period of two (2) years from the date of notice of the breach unless public necessity requires otherwise or unless the breach or violation is cured within ten (10) days (or such additional time as reasonably determined by the Town Manager) of written notice thereof from the Town. All Town employees responsible for approving business dealings or granting town services shall make reasonable efforts to determine that the applicant is in good standing before approving any town services or business dealings. The Town shall notify an applicant in writing of the reasons for a denial within ten (10) business days or the applicant shall be determined to be in good standing with regards to the particular request at issue. Applicants initially found to not be in good standing must obtain a written confirmation from the Town Finance Director indicating the applicant has brought itself into good standing or has entered into a binding agreement for payment of outstanding obligations before any town service shall be granted or business dealing entered into. Requests for bids published by the Town shall state that Town contracts shall not be awarded to an applicant that is not in good standing and recommend that potential applicants promptly obtain a letter confirming their good standing. This ordinance outlines procedures to notify applicants for bids of their standing with the Town, and any applicant not in good standing when a bid is awarded shall be disqualified from receiving the contract. The ordinance outlines appeals procedures for applicants who are denied a town service or the chance to engage in business dealings with the Town due to not being in good standing. The ordinance provides an exception for emergency conditions affecting habitability or safety.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on April 5, 2010.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in "The Smyrna Clayton Sun Times" on _____, 2010 and posted at the Town Hall on _____, 2010.

So Certifies:

Town Clerk

This shall certify that the title, effective date and synopsis of this Ordinance was published in "The Smyrna Clayton Sun Times" on _____, 2010 and posted at the Town Hall on _____, 2010.

So Certifies:

Town Manager