

ORDINANCE 20-07

AN ORDINANCE TO AMEND THE TOWN OF MILLVILLE CODE AT CHAPTER 90, ENTITLED "LICENSES," BY UPDATING LICENSE REQUIREMENTS AND INCORPORATING THE RENTAL RECEIPT TAX, WHICH IS REMOVED AS ARTICLE III OF CHAPTER 132, ENTITLED "TAXATION."

WHEREAS, the Town Council of Millville has the power to adopt ordinances for the protection and preservation of Town property, rights and privileges; for the preservation of peace and good order; for securing protection and promotion of health, safety, comfort, convenience, welfare and happiness of the residents of the Town;

WHEREAS, the Town of Millville has adopted a License Ordinance for the municipality, which has been codified in Chapter 90 of the Town Code, and a Gross Rental Receipt Tax Ordinance, which has been codified in Article III of Chapter 132 of the Town Code; and

WHEREAS, the Town Council may from time to time amend, supplement, or change the regulations and restrictions established by these Ordinances; and

NOW, THEREFORE, BE IT ORDAINED, by the Town Council for the Town of Millville, Sussex County, Delaware, a majority thereof concurring Council duly met, following a duly noticed Town Council meeting held on February 11, 2020, that the following language hereby is adopted and incorporated into the Town of Millville Code:

Section 1. Amend Chapter 90, entitled "Licenses," with deletions shown by bold strike-through and additions shown by bold underline as follows:

Chapter 90. Licenses

Article I. Business Licenses

§ 90-1. Definitions.

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

EMPLOYEE

Any individual working in a full- or part-time capacity for another person. For purposes of this chapter, an individual working as a temporary worker through an employment agency shall be considered an employee.

GENERAL BUSINESS

Any person, whether physically located within or outside of the corporate limits of the Town of Millville, engaged for profit in any of the following in the Town: selling any merchandise or commodities from any given establishment; providing facilities for use, entertainment, or enjoyment; providing services for use; serving food; soliciting door-to-door; peddling;

hawking; manufacturing, whether industrial or otherwise; and providing services not otherwise mentioned.

PERSON or PERSONS

Includes individuals, and all artificial entities such as partnerships, firms, companies, associations, corporations, limited liability companies, and trusts.

~~§ 90-1, § 90-2.~~ Annual license required; applicability.

A. No person shall engage in or carry on or aid or assist as employee, clerk or otherwise, in the Town of Millville, any business, occupation or activity or use therefor, any wagon, vehicle stand, store or other place or thing, at or from which any merchandise or commodity is dispensed or facilities or services are provided to members of the general public or members of an association, club or other body or the like, without first having paid the prescribed fee and having obtained from the Town of Millville an annual license for such business, occupation or activity. Specifically included are all persons, ~~firms and corporations engaged for profit in selling any and all merchandise and/or giving commodities and/or in providing facilities, services, rental units and/or food service within the Town limits~~ engaging in general business.

B. A license shall be obtained for each branch establishment or location of the person's general business engaged in as if each branch or establishment or location were a separate business, provided that accessory buildings used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments.

C. If more than one business, rental, or occupation is carried on in any one building, each such business, rental, or occupation shall be licensed separately. Businesses that are a part of partnerships, firms, companies, associations, corporations, limited liability companies and trusts and do business under another name require individual business licenses.

D. All property owners who rent or offer to rent property shall obtain a rental license. All property owners who do not rent shall be required to file a certification that the owner does not rent or lease his or her property.

~~§ 90-2, § 90-3.~~ Application and forms for public event permits or licenses.

A. Applications for all licenses required by this chapter shall be made, in writing, to the Town Manager or ~~her/his~~ designee in the absence of provision to the contrary. ~~Applications for all licenses shall be kept and filed by the Town Manager or her/his designee.~~ Forms for all licenses and public event permits, and applications therefor, shall be prepared and kept and filed by the Town Manager or designee.

B. Application procedure. New applications for a license required by ~~§ 90-1 § 90-2~~ § 90-2 hereof shall be made on the prescribed form to the Town of Millville, and no license shall be granted until the license fee shall have been paid in full. Each such license and such application shall specify to whom it shall be issued and give the following information:

- (1) The home or business address and telephone numbers of the applicant.
- (2) If the applicant is a partnership, the names and addresses and telephone numbers of individuals composing the partnership.
- (3) If the applicant is a corporation or other artificial entity, the names and addresses and telephone numbers of ~~the~~ its principal officers ~~of the corporation~~.
- (4) A full description of the nature of the business or enterprise for which the license is required.
- (5) The specific location of the business, occupation, rental, or activity.
- (6) The maximum number of employees, rental units, rental rooms, or storage units of a business during the license year.
- (7) A copy of a valid Delaware state business license for the business, Delaware professional license for the individual or business (if applicable).
- (8) For all contractors, proof of liability insurance, issued in the name of the business.
- (9) All other information requested on the application provided by the Town.
- (10) All additional information requested to assist in the approval of the license.

C. Each license applicant and each licensee shall certify, in writing, on a form prepared by the Town, as follows:

- (1) The information on the application is true and correct and that a false answer can subject the application to denial or a license to revocation.
- (2) The applicant has consistently complied with all provisions of this chapter and all other laws and ordinances of the Town of Millville and other agencies and jurisdictions relating to the business or enterprise for which the license is required, including applicable zoning and building codes, and shall continue to do so throughout the term of the license.

D. Yearly renewal applications for a license required by ~~§ 90-1~~ § 90-2 shall validate the renewal information on the application generated by the Town of Millville and make any changes and ~~for~~ corrections as needed. No license shall be granted until the license fee shall have been paid in full and the renewal application signed.

E. Address corrections and ~~for~~ changes to existing licenses may be made on the yearly renewal application or a change of address form to the Town of Millville. It is the responsibility of the license holder to notify the Town of Millville, in writing, of any

changes to the account. It is further the responsibility of the license holder to notify the Town of Millville, in writing, if the business is no longer valid.

F. Each license or public event permit shall bear the name of the Town Manager.

§ 90-4. Investigation; ~~issuance and revocation of license~~ of applicants, licensees, and permittees.

A. The Town Manager or ~~her/his~~ designee shall investigate and review all applications for licenses **and public event permits** to do business within the limits of the Town of Millville to determine whether:

- (1) The applicant has a reputation for operating a lawful business in an honest manner.
- (2) The applicant has shown cause that ~~he/she~~ **the applicant** would abide by and obey the laws and ordinances of this community.

B. The Town Manager or ~~his/her~~ designee shall not issue any license if it has been found that the applicant does not comply with the requirements of Subsection A hereof.

C. The Town Manager or ~~his/her other representative~~ **designee** may recommend to the Town Council the revocation or suspension of a license, in part or in its entirety, if it is found **via subsequent investigation** that the license **or public event permit** holder or applicant does not comply with the requirements of this chapter.

§ 90-5. Appeals from decisions of Town Manager.

Any person aggrieved by the decision of the Town Manager may, within five days, take an appeal to the Town Council by giving written notice of his or her election to do so to the office of the Town Manager and upon payment of a fee as provided by the fee schedule on file in the Town office. The Town Manager shall notify the Mayor, who shall call a meeting of the Town Council to hear the appeal after giving notice of the hearing ~~in a newspaper of local circulation~~ **to the appellant** at least 15 days prior to said hearing.

§ 90-6. Payment of fees; termination of annual licenses.

All annual license fees shall be due and payable to the Town of Millville no later than the first day of June of each year, and all licenses shall terminate on ~~the last date of the fiscal year of the Town~~ **April 30th of each year** where no provision to the contrary is made. A late fee, as listed in the fee schedule on file in the Town office, is imposed if payment is received or postmarked after the due date.

§ 90-7. Changes in location and permitted acts.

The location of any licensed business or occupation or any permitted act may be changed, provided 10 days' notice thereof is given to the Town Manager or ~~her/his~~ designee in the absence of any provision to the contrary, provided that the building and zoning requirements of the ordinances of the Town of Millville are complied with.

§ 90-8. Nuisances.

No business, licensed or not, shall be so conducted or operated as to amount of nuisance in fact.

§ 90-9. License to be posted.

It shall be the duty of any person conducting a licensed business to keep ~~his~~ any license required by this chapter posted in a prominent place on the premises used for such business at all times, or, if necessary, the license can be maintained in the vehicle used for the business or carried by an employee or person involved in the business. A license, issued by the Town of Millville, must be presented upon request by the Town Manager, ~~Code Enforcement Officer or their designee~~ Code and Building Department or a law enforcement official.

§ 90-10. Limitation on number of licenses.

In the absence of a specific provision restricting the number of licenses to be issued for a particular business, no ordinance or other action of the Town shall be determined to limit the number of licenses or ~~franchises~~ public event permits that may be issued.

§ 90-11. License fees and taxes.

License fees and taxes shall be paid to the Town of Millville for conducting the business and engaging in the occupations and activities herein named and shall be as set forth in the fee schedule on file in the Town office:

- A. Rental license fee and rental tax for apartments, cottages, cabins or private houses or other establishments offering rooms for public rental.
- B. Rental license fee and rental tax for motels, hotels, bed-and-breakfast inns or other establishments offering public rental which are subject to paying the State of Delaware accommodations tax.
- C. Rental license fee and rental tax for stores, garages, warehouses or any other commercial buildings or structures which rent or lease space or other facilities.
- D. Annual business license fee.
- E. Each vendor stand, stall, vehicle, tent, or similar display per each day of a permitted public event not sponsored by the Town.

§ 90-12. Conditions attached to license; revocation of breach of condition; notice and hearing.

A. For purposes of this section, the following terms shall be defined as indicated:

BUSINESS

The legal entity to whom the business license is issued (e.g., a sole proprietorship, partnership, corporation, limited liability company, or limited partnership).

OPERATOR or MANAGER

Those persons on the premises having custody and control thereof with authority to supervise other employees on the premises.

OWNER

Includes those persons owning an interest in the business as a sole proprietor, partner, stockholder in a close corporation, or as a member of limited liability company or limited partnership.

PAST DUE

The owner, operator, or manager of the business shall have been provided written notice, via hand delivery or regular mail (postage prepaid, to that address provided to the Town on the business's license application), of the amount(s) due to the Town, the reason(s) for which such amounts are due, and a date (not less than 10 days from the date such notice was hand-delivered or deposited into the U.S. mail) by which such amount(s) must be paid in full.

PERMITTED PUBLIC EVENT

Any event, not otherwise against any provision of this Code or Town ordinances, which is offered to attract members of the public, including, but is not limited to, any performance, exhibition, exposition, circus, fair, festival, food festival, pageant, regatta, sports event, dance, and lecture, but excluding any yard sale.

VENDOR

A person or business entity engaged for profit in the temporary outdoor display, sale, or both, of food, crafts, merchandise, or any combination thereof, at a permitted public event.

A. B. Conditions attached to business license. Every license issued under this chapter shall be subject to the following conditions, violation of any of which shall be grounds for immediate revocation of the license in accordance with the procedures set forth herein:

- (1) Every business shall at all times be used and operated only for lawful purposes under, and in accordance with, all governing federal and state laws and regulations and Town ordinances and regulations.

(2) No amount of money shall be past due and owing the Town on account of any municipal service (e.g., water, trash collection), tax, assessment, fee, penalty or fine, by the business or by the owner(s) of such business. ~~For purposes of this section, the following items shall be defined as indicated:~~

BUSINESS

~~The legal entity to whom the business license is issued (e.g., a sole proprietorship, partnership, corporation, limited liability company, or limited partnership).~~

OPERATOR or MANAGER

~~Those persons on the premises having custody and control thereof with authority to supervise other employees on the premises.~~

OWNER

~~Includes those persons owning an interest in the business as a sole proprietor, partner, stockholder in a close corporation, or as a member of limited liability company or limited partnership.~~

PAST DUE

~~The owner, operator, or manager of the business shall have been provided written notice, via hand delivery or regular mail (postage prepaid, to that address provided to the Town on the business's license application), of the amount(s) due to the Town, the reason(s) for which such amounts are due, and a date (not less than 10 days from the date such notice was hand-delivered or deposited into the U.S. mail) by which such amount(s) must be paid in full.~~

PERMITTED PUBLIC EVENT

~~Any event, not otherwise against any provision of this Code or Town ordinances, which is offered to attract members of the public, including, but is not limited to, any performance, exhibition, exposition, circus, fair, festival, food festival, pageant, regatta, sports event, dance, and lecture, but excluding any yard sale.~~

VENDOR

~~A person or business entity engaged for profit in the temporary outdoor display, sale, or both, of food, crafts, merchandise, or any combination thereof, at a permitted public event.~~

B.-C. Notice and opportunity to remedy violated condition or to request a hearing. No business license or public event permit shall be denied or revoked unless written notice of such denial or revocation is provided to the applicant or license or public event permit holder, either by personal delivery, by commercial courier (e.g., Federal Express, UPS), or by U.S. mail, addressed to the last address provided to the Town by the applicant/license or public event permit holder, proper postage affixed, stating the reason(s) for such denial/revocation and affording the applicant/ or public event permit license holder an opportunity to remedy the condition violated or to request a hearing before the Town Manager to contest such denial/revocation. Unless a longer time is requested by the applicant/license holder, the Town Manager shall schedule and hold the hearing within five business days of receiving the request. Any person aggrieved by the decision of the Town Manger may appeal to the Town Council in accordance with § 90-5.

~~C.~~ D. Conditions attached to permitted public event. Every permitted public event licensed under this chapter shall be subject to the following conditions, violation of any of which shall be grounds for immediate revocation of the license in accordance with the procedures set forth herein:

(1) Every permitted public event shall at all times be used and operated only for lawful purposes under, and in accordance with, all governing federal and state laws and regulations, Town ordinances and regulations, and the reasonable conditions placed upon the permitted public event's license by the Town Manager to protect the health and safety of the attendees; and

(2) The use of a tent for a permitted public event shall also be limited to no longer than 10 consecutive days, including setup and teardown.

§ 90-13. Exemption from fee requirements.

The following shall be exempt from the payment of business license fees charged by the Town of Millville:

A. The United States of America, the State of Delaware, Sussex County, or any agency or department thereof, including school districts; and

B. Any church or religious society; ~~or~~ and

C. Any nonprofit corporation organized for educational or charitable purposes; ~~;~~ and

D. Yard sales, residential: the sale of a person's personal property at a that person's residence is not a business or work. A public event permit is not required for residential yard sales. However, yard sales are limited to two times per year, and the Town is to be notified of such sales.

§ 90-14. Violations and penalties.

Any person violating any provision of this ~~chapter~~ article shall be subject to such penalties and pay such fines as set forth in Chapter 1, Article II, General Penalty.

Article II. Tax and Requirements on Rental Properties

§ 90-15. Definitions.

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

BEDROOM

An area contained within a residential rental, heated or cooled by any equipment, which is used, occupied, listed or labeled for human habitation and designated as a sleeping room or area.

COMMERCIAL PROPERTY

A building or structure located on a commercially used property; vacant lots are excluded.

CURRENT RATE

The rate, expressed as a percentage, by which the gross rental receipts are multiplied to determine the tax due.

MOTOR VEHICLE

A self-propelled device licensed as a motor vehicle used for transportation of people or goods over roads.

OCCUPANCY

The use or possession or the right to use or possess any property subject to this article.

RECREATIONAL VEHICLE

A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

RENT

The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash credits and property or services of any kind or nature.

RESIDENTIAL PROPERTY

Dwellings designed to serve as either single-family, two-family or multiple-family dwellings and constructed to provide complete housekeeping facilities for one or more individuals.

RESIDENTIAL RENTAL

Single-family, two-family or multiple-family dwellings used for rental purposes on a daily, weekly, monthly, seasonal, or annual basis.

§ 90-16. Imposition of tax.

A. There is hereby imposed and assessed a gross rental receipts tax of a minimum of 2% and a maximum of 5% of the rent for occupancy of any private and public lodging facilities and housing accommodations, including rooms rooming homes, boardinghouses, bed-and-breakfast inns, cottages, cabins, houses, apartments (whether in condominiums or not), stores, garages, warehouses, or any commercial buildings or structures which rent or lease space or other facilities, except such properties that are subject to the lodging tax under Title 30, Part V (governing public accommodations taxes), Chapter 61, Lodging Tax, of the Delaware Code.

Notwithstanding any of the foregoing, the percentage shall not be more than the percentage charged for gross rental receipts or for lodging by the State of Delaware.

B. The Council shall establish the rate each year based upon factors, including but not limited to the status of the Town's actual versus budgeted expenditures and any actual or anticipated state gross rental receipts tax.

§ 90-17. Payment of tax.

A. The payment of the rental tax shall be the responsibility of the owner of the residential and commercial property; provided, however, that any such owner may designate an agent to collect and pay the tax to the Town.

B. Every property owner offering property for rent or receiving any rent on which the tax is imposed under this section shall be obligated to file, or have filed by a designated agent, a gross rental receipts tax form with the Town Manager and to pay the Town the amount of tax due the Town as follows: The tax on rent received in any year for occupancy which occurs during the period from October 1 through April 30, tax shall be due and payable on or before the following June 1; the tax on rent received from May 1 through September 30, tax shall be due and payable on or before the following November 1.

§ 90-18. Rental Tax Form.

Every year the Town will send a copy of the rental tax form to all currently licensed landlords or their designated agents. This form is to be filled out for each rental property owned and shall be returned to the Town office, along with a check for the current tax due. The tax due shall be calculated by multiplying the current rate by the gross receipts.

§ 90-19. Interest on unpaid tax; collection charge; suspension of rental license.

A. Any person obligated to pay the tax imposed by this article who fails or refuses to file the required rental tax form and to remit the tax required to be paid within the time and in the amount specified in B-1 hereof, unless it is shown that such failure is due to reasonable cause, shall be charged, in addition to the amount of tax owed the Town, interest thereon at the rate of 1 1/2% per month until such debt is fully paid. If such debt remains unpaid by the time of expiration of the license to rent the property concerning which the rental tax has not been paid, a renewal rental license shall not be issued with regard to such property. The Town shall impose an eighteen-percent collection charge on the delinquent tax and interest thereon.

B. Any person owning a residential property who violates this article shall be subject to the immediate suspension of the rental license if ordered by the Town Council, such action to remain in effect until a hearing and decision by the Town Council on the possible restoration of the rental license.

§ 90-20. Residential rental requirements.

A. The property owner shall use reasonable business practices to ensure that the occupants and guests of a residential rental complies will all applicable codes concerning fire, building, health and safety, zoning, and all other relevant laws.

B. The overnight occupancy of a residential rental shall not exceed the sum of two persons per bedroom plus an additional two persons. Children under the age of six years shall not be counted towards the overall number of occupants.

C. The property owner shall use reasonable business practices to ensure that the occupants and guests of the residential rental do not create unreasonable noise disturbances, engage in disorderly conduct, or violate provisions of the Code or any applicable law of the State of Delaware.

D. The property owner shall limit their rental occupants to one (1) motor vehicle parking space (not to include a recreational vehicle) for each bedroom as shown in the property records of the Town, with all off street parking available to the rental property utilized first. The property owner shall include the parking limitations set forth in this Section in any rental agreement and all other communications with tenants.

E. The property owner shall provide adequate waste and recycle services.

Section 2. Amend Article III of Chapter 132, entitled "Taxation," with deletions shown by bold strike-through and additions shown by bold underline as follows:

Article III. ~~Gross Rental Receipt Tax~~ [Reserved]

~~§ 132-13. Definitions.~~

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

~~COMMERCIAL PROPERTY~~

~~A building or structure located on a commercially used property; vacant lots are excluded.~~

~~CURRENT RATE~~

~~The rate, expressed as a percentage, by which the gross rental receipts are multiplied to determine the tax due.~~

~~GROSS RENTAL RECEIPTS~~

~~The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash and property or services of any kind or nature and also any amount for which the occupant is liable for occupancy without any deduction there from whatsoever.~~

~~PERSON or PERSONS~~

~~Individuals, partnerships, firms, companies, associations, corporations, limited liability companies and trusts.~~

~~RESIDENTIAL PROPERTY~~

~~Dwellings designed to serve as either single-family, two-family or multiple-family dwellings and constructed to provide complete housekeeping facilities for one or more individuals.~~

~~§ 132-14. Imposition of tax.~~

~~A. There is hereby imposed a rental tax of a minimum of 2% and a maximum of 5% of the gross rental receipts for each residential and commercial property, except such properties that are subject to the lodging tax under Title 30, Part V (governing public accommodations taxes), Chapter 61, Lodging Tax, of the Delaware Code. Notwithstanding any of the foregoing, the percentage shall not be more than the percentage charged for gross rental receipts or for lodging by the State of Delaware.~~

~~B. The Council shall establish the rate each year based upon factors, including but not limited to the status of the Town's actual versus budgeted expenditures and any actual or anticipated state gross rental receipts tax.~~

~~C. For income received from October 1 through April 30, tax shall be due and payable on or before the following June 1; for income received from May 1 through September 30, tax shall be due and payable on or before the following November 1.~~

~~D. The payment of the rental tax shall be the responsibility of the owner of the residential and commercial property; provided, however, that any such owner may designate an agent to collect and pay the tax to the Town.~~

~~§ 132-15. Rental tax form.~~

~~Every year the Town will send a copy of the rental tax form to all currently licensed landlords or their designated agents. This form is to be filled out for each rental property owned and shall be returned to the Town office, along with a check for the current tax due. The tax due shall be calculated by multiplying the current rate by the gross receipts.~~

~~§ 132-16. Interest on unpaid tax; collection charge; suspension of rental license.~~

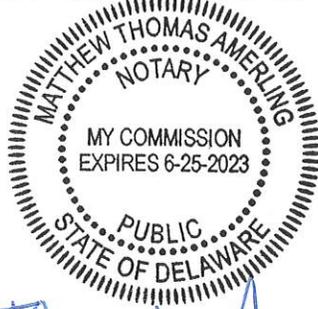
~~A. Any person obligated to pay the tax imposed by this article who fails or refuses to file the required rental tax form and to remit the tax required to be paid within the time and in the amount specified in § 132-14 hereof, unless it is shown that such failure is due to reasonable cause, shall be charged, in addition to the amount of tax owed the Town, interest thereon at the rate of 1 1/2% per month until such debt is fully paid. If such debt remains unpaid by the time of expiration of the license to rent the property concerning which the rental tax has not been paid, a renewal rental license shall not be issued with regard to such property. The Town shall impose an eighteen-percent collection charge on the delinquent tax and interest thereon.~~

~~B. Any person owning a residential property as defined in § 132-13 hereof, and who violates the terms of such definition shall be subject to the immediate suspension of the rental license if ordered by the Town Council, such action to remain in effect until a hearing and decision by the Town Council on the possible restoration of the rental license.~~

Section 3. This ordinance shall become effective on May 1, 2020.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF MILLVILLE, SUSSEX COUNTY, DELAWARE, ON THIS 11th DAY OF FEBRUARY, 2020.

SEAL:



ATTESTED:

Matthew Thomas Amerling

Steve Maneri
STEVE MANERI, MAYOR

Ronald Belinko
RONALD BELINKO, SECRETARY

SYNOPSIS

This ordinance amends Chapter 90 of the Town Code to provide clarifications relating to business licenses. In addition, the ordinance removes the gross rental receipts tax provisions from Chapter 132 and relocates them, with clarifications, into Chapter 90.