

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY
BY ADDING A NEW CHAPTER TO BE ENTITLED “CONCESSIONS AND
CONCESSIONAIRES”**

ORDINANCE 200-20 (SECOND READING)

(Sponsored by Mayor Saxton)

The purpose of this ordinance is to establish uniform policies and procedures for the procurement and regulation of concession services that may be required by the Town of South Bethany in the public interest.



ORDINANCE NO. 200-20

AN ORDINANCE TO AMEND the Code of the Town of South Bethany by adding a new chapter, to be entitled "Concessions and Concessionaires".

BE IT HEREBY ENACTED by the Council of the Town of South Bethany, Sussex County, a majority thereof concurring, that the following ordinance be, and hereby is, adopted, as follows:

**Chapter 58
"Concessions and Concessionaires"**

ARTICLE 1

Solicitation of Concessions; Operation and Oversight

- §58-1 Definitions.
- §58-2 Proposals.
- §58-3 Advertising for concessionaire proposals.
- §58-4 Opening of proposals; award of concessions.
- §58-5 Concession fee.
- §58-6 Payment of fee by successful applicants.
- §58-7 Supervision of concessionaires.
- §58-8 Duties of concessionaires; transfer of ownership; complaints.
- §58-9 Storage of equipment.
- §58-10 Liability insurance requirements.
- §58-11 Temporary Permits for Town Events.
- §58-12 Applicability.
- §58-13 Miscellaneous.

ARTICLE 1

Solicitation of Concessions; Operation and Oversight

§ 58-1. Definitions.

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

COMMERCIAL ACTIVITY

The buying or selling of goods, services, interests, real property or intangible rights; or selling activities in the nature of business, trade, industry or commerce, even if conducted by a nonprofit, charitable, social or educational organization. Included, by way of example and not in limitation, are the buying or selling of or the offering to buy or sell of goods, services, real property interests or intangible rights and the solicitation of offers, and the taking or filling of orders, including distribution of handbills or pamphlets of a commercial nature, advertising circulars, samples and handouts.

PERSON

Includes any corporation, partnership, unincorporated association or other business entity.

CONCESSION

A specific service(s) or product(s) to be made available through the operation of a commercial activity on any street, sidewalk, boardwalk or public right-of-way, or upon the public beach, or upon any Town-owned lands within the Town of South Bethany

TOWN

The Town of South Bethany, DE

§ 58-2. Proposals.

Proposals shall be in writing on forms to be provided by the Town Manager and delivered sealed in a secure envelope. Proposals shall contain such relevant information as deemed necessary by the Town Manager, including but not limited to:

- A. The name and address of the applicant, as well as all persons having any ownership interest, in the commercial activity proposed to be conducted.
- B. A detailed description of the commercial activity which is proposed, including the number of employees, days and hours of operation, equipment and facilities and related information.
- C. The specific location of the proposed commercial activity.
- D. The type, amount and condition of equipment owned, or capital held, in the name of the person applying for the license, that will be used in providing the proposed concession.
- E. List of Town facilities and/or equipment that would be utilized, if any, by the concessionaire
- F. Applicant's relevant experience in providing the same or similar concession(s), including references, and any additional information that could help inform the selection decision.
- G. The concession fee to be paid to the Town.

§ 58- 3. Advertising for concessionaire proposals.

- A. Whenever it shall be determined by the Town Council that it is in the public interest that a specific service(s) or product(s) be made available through the operation of a commercial activity on any street, sidewalk, boardwalk or public right-of-way, or upon the public beach, or upon any Town-owned lands within the Town of South Bethany, the Town Manager shall cause to be placed in Town Hall, and in two newspapers of general circulation in Sussex County a notice requesting sealed proposals from qualified persons interested in providing such commercial activities. Said notice shall contain:
- (1) The commercial activity for which proposals are sought.
 - (2) The number of concessions which may be awarded.
 - (3) The date by which proposals must be submitted.
 - (4) The date, time and place when such proposals shall be opened.
 - (5) The location(s) where the commercial activity shall be conducted.
 - (6) The time period for which the concession will be awarded.
 - (7) The amount of the concession fee to be paid to the Town, if established by the Town Council, or if the concession fee will be established by competitive bidding. Town Council reserves the right to establish a minimum concession fee for any given concession contract.
- B. Notice shall be posted and advertised for at least three (3) weeks prior to the date by which proposals must be submitted.

§ 58- 4. Opening of proposals; award of concessions.

- A. The Town Manager shall open the proposals at the date, time and place advertised. The Town Manager and staff may subsequently make inquiry into the qualifications of the potential vendors and/or request additional information from the vendor(s). The Town Manager shall compile the data from the bids submitted, for review by Town Council.

- B. The data and the bid materials shall subsequently be reviewed by Town Council. A concession shall be awarded to the person who, having satisfactorily complied with this article, appears to the Town Council to be the person most likely to render the best service to the Town and its visitors. In making its determination, the Town Council shall consider, among other things, the history, experience and reputation of the applicant and whether he or she has sufficient capital or adequate equipment to successfully carry out his or her obligations should he or she be awarded the concession. If the Town Council does not set the concession fee in advance, but rather by competitive bidding, the amount of a bid shall be one factor to be considered by the Town Council in evaluating any proposals, but the Town Council shall not be obligated to accept the highest concession fee bid. The Town Council may, in its absolute discretion, refuse to award any concession if it is determined that none of the applicants or proposals is acceptable. If practicable, and if it appears that in so doing better service would be provided to the Town, Town Council may split the award between more than one vendor, but Town Council shall be under no obligation to do so.
- C. The Town Manager and the successful applicant to whom a concession is awarded shall confirm, in writing, the specific details and obligations of the concession to be operated, which written confirmation may contain such minor modifications of the original proposal as deemed appropriate by the Town Council and which will be incorporated into the contract between the Town and the applicant.

§ 58- 5. Concession fee.

The concession fee to be charged for the privilege of conducting each concession may be established on the basis of competitive bidding or may be determined by the Town Council prior to requesting proposals under § 58-2 above. In either event, the notices inviting proposals shall so indicate.

§ 58- 6. Payment of fee by successful applicants; Termination.

- A. The concession fee as well as the fee for a mercantile license of the successful bidder shall be payable at the office of the Town Manager at such date(s) and time(s) as determined by the Town Manager, and as specified in the written contract entered into with the successful bidder.
- B. Failure to obtain a mercantile license or to pay the concession fee when due shall be cause to terminate the concessionaire's permit.

- C. Failure to maintain or obtain required licenses, permits and approvals required for the proposed concession services, if any, from other State and County regulatory bodies, shall be cause to terminate the concessionaire's permit.
- D. The written contract between the successful bidder and the Town may include other provisions regarding termination.

§ 58 – 7. Supervision of concessionaires.

- A. The Town Manager shall oversee and supervise concessionaires and their operations authorized by the Town Council pursuant to this article.
- B. Any advertisement (including representations on social media) by a concessionaire purporting to represent that the person is an official concessionaire of the Town of South Bethany, or that their services are sponsored by the Town, shall first be reviewed and approved by the Town Manager prior to publication.

§ 58-8. Duties of concessionaires; transfer of ownership; complaints.

- A. Concessionaires shall be expected to maintain their inventory and equipment, if any, in safe and good working condition, and in such minimum quantity as may be required to provide adequate service and supply, and as specified in the written contract for the concession award. All concessionaires shall employ and maintain competent personnel to provide courteous and efficient service.
- B. Concessionaires shall operate their concessions in strict compliance with the terms contained in the written contract and the confirmation provided under § 58-4 (C) above.
- C. The failure to employ competent, courteous and efficient personnel or failure to operate in strict compliance with the terms of the written confirmation shall be cause to terminate the concessionaire's permit. The Town Manager may order any non-compliant concession suspended pending formal review and/or termination by Town Council.
- D. Any transfer or change in ownership, without having first obtained the approval of the Town Council at an official meeting of the Town Council, shall be cause to terminate the concessionaire's permit.

- E. Upon receipt of a written and sworn complaint, if the Town Manager determines that the concessionaire has failed to comply with the obligations imposed by this article, by state or federal law and/or by the written contract entered into with the Town, the Town Manager may require the concessionaire to pay to the Town liquidated damages of \$100 for the first complaint and \$200 for the second complaint. A third complaint shall be cause to terminate such person's concession permit. Any such contract penalty or any suspension of a concession permit may be appealed by the concessionaire, in writing, to the Town Council within 30 days of the imposition.
- F. Upon receipt of a written appeal, or upon evidence of other cause for termination, the Town Council shall schedule a public hearing to consider and decide the matter, at which hearing the concessionaire may appear in person or by legal counsel, and may present such relevant evidence as he or she deems appropriate. Strict rules of evidence or procedure shall not apply at such hearings, but the Town Council may hear and consider such evidence, which possesses probative value commonly accepted by reasonably prudent men in the conduct of their own affairs. Town Council's determination of the issue(s) presented at such hearing shall be final.
- G. Concessionaires who require the use of Town facilities and/or equipment shall be responsible for any cleaning and maintenance required as a result of their concession activities, as well as any and all repair, maintenance or replacement of Town equipment damaged as a result of their concession activities. Failure to fulfill these responsibilities, or excessive or avoidable damage to Town facilities or equipment by the concessionaire, shall be cause to terminate the concessionaire's permit.

§ 58-9. Storage of equipment.

If storage space is authorized by the Town Manager, concessionaires shall store all inventory and equipment in structures built according to specifications and design approved by the Town Manager and placed in locations approved by the Town Manager. If storage space is not authorized, concessionaires shall remove all of their inventory and equipment to a place of private storage at the end of each business day. Details of storage space, if any, shall be specified in the written confirmation and/or contract.

§ 58-10. Liability insurance requirements.

Each person to whom a concession is awarded under this article shall carry insurance for general liability with minimum limits of \$500,000 per person, \$1,000,000 per occurrence for bodily injury or death and \$25,000 for property damage, which policies shall show the Town of South Bethany and its officers, agents and employees as additional insureds. All insurance policies shall require 30 days' written notice to the Town of South Bethany prior to cancellation. By accepting the award of such concession, the successful applicant shall agree to maintain insurance and to indemnify and hold the Town harmless against any claim or loss whatsoever arising out of negligence or misconduct in the provision of the concession. Failure to provide or maintain documentation evidencing the required types and amounts of insurance throughout the term of the concession shall be cause to terminate the concessionaire's permit.

§ 58-11. Temporary Permits for Town Events.

Notwithstanding the provisions of this Chapter, the Town Manager may issue a temporary permit to any person, business or entity who wishes to conduct a commercial activity in conjunction with any performance or participation at a Town-sponsored event or activity, whether or not such person is a concessionaire, subject to the following conditions:

- A. The location, including the size of the area, which may be used for the commercial activity, will be determined by the Town Manager;
- B. Any and all products or services which may be offered for sale at the Town-sponsored event or activity must first be approved for sale by the Town Manager;
- C. Any and all advertisements for products or services, which may be offered for sale, must first be approved for use at the Town-sponsored event or activity by the Town Manager;
- D. The temporary permit shall be restricted in duration, and the Town Manager shall determine what hours and/or days the permit will be effective.

§ 58-12. Applicability.

This article shall operate prospectively from the date of enactment, but shall not affect any concession, license, or contract currently in existence as of the effective date hereof until the expiration of the then-current term of that license or contract.

§ 58-13. Miscellaneous.

Notwithstanding anything to the contrary in this Chapter, in the event that this Chapter, in whole or in part, is declared or determined by a judicial, administrative, or legislative authority (whether State or Federal) exercising its jurisdiction to be excessive, unreasonable, unenforceable, void, unlawful, or otherwise inapplicable, the judicial, administrative, or legislative order shall control the procurement of concessions in the Town of South Bethany until this Chapter is amended.

Effective date: This ordinance shall become effective upon the date of adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SOUTH BETHANY, SUSSEX COUNTY, DELAWARE, ON THE 13TH OF NOVEMBER 2020.