

Proposals as set forth in § **123-8** shall be in writing on forms to be provided by the Town Manager and sealed. 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 owning any 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, which will be used in providing the proposed concession.

[1]:

*Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

#### § 123-8 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 Bethany Beach, the Town Manager shall cause to be placed in five public places in the Town 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 to 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 if established by the Town Council, if any, or if the concession fee will be established by competitive bidding.

B.

Notice shall be posted and advertised for at least three weeks prior to the date by which proposals must be submitted.

§ 123-9 Opening of proposals; award of concessions.

A.

The Town Council shall open the proposals at the date, time and place advertised.

B.

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 bid. The Town Council may, in its absolute discretion, refuse to award any concession if it is its determination that none of the applicants or proposals is acceptable.

C.

The successful applicant to whom a concession is awarded shall confirm, in writing, the specific details 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.

§ 123-10 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 established by the Town Council prior to requesting proposals under § 123-8 above; and, in either event, the notices inviting proposals shall so indicate.

§ 123-11 Payment of fee by successful applicants.

A.

The concession fee as well as the fee for a business license of the successful applicant shall be payable at the office of the Town Manager at such date(s) and time(s) as determined by the Town Manager.

B.

Failure to pay the concession fee when due shall be cause to terminate the rights of such person, which were awarded to him or her upon his or her successful proposal, without further notice to such person.<sup>[1]</sup>

[1]:

*Editor's Note: Former Subsection C, regarding time being of the essence, which immediately followed, was repealed 10-15-2010 by Ord. No. 458.*

§ 123-12 Supervision of concessionaires.

The Town Manager shall oversee and supervise concessionaires and their operations authorized by the Town Council pursuant to this article.

§ 123-13 Duties of concessionaires; transfer of ownership; complaints.

A.

Concessionaires shall be expected to maintain their equipment in first-class condition in such minimum quantity as may be required to provide adequate service and supply and 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 confirmation provided under § 123-9C.

C.

The failure to employ competent personnel or failure to operate in strict compliance with the terms of the written confirmation shall be cause to terminate the concessionaire's permit.

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 concession document required by § 123-9C above, the Town Manager may require the concessionaire to pay to the Town liquidated damages of \$50 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 such termination of a concession permit may be appealed by the concessionaire, in writing, to the Town Council within 30 days of the imposition.<sup>[1]</sup>

[1]:

*Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*

F.

Upon receipt of a written appeal, 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, may cross-examine and call witnesses 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.