

## **Sec. 90-27. Certificates of use.**

- (1) It is hereby deemed unlawful for any person to open or operate any business and/or occupy any structure within the town limits for the privilege of engaging in any business prior to obtaining the required certificate of use.
- (2) No structure used for the purpose of exercising the privilege of doing business within the town limits shall be used or occupied or any existing use enlarged, or any new use made of any land, body of water, or structure, without first obtaining a certificate of use therefore from the town manager or designee as may be required herein.
- (3) The certificate of use shall be renewable annually for all existing, new, and future business use classifications on any land, body of water, and or in any structure including the individual units within said structure within the town limits.
- (4) A separate certificate of use shall be obtained for each place of business and for each corporation and/or legal entity within each place of business.
- (5) It shall be the duty of every person owning, operating, or purchasing any business within the town limits to comply with the requirements of this division prior to opening any business and/or occupying structure.

### *90-27.1 Term of certificate of use and transfer.*

- (1) No certificate of use shall be issued for more than one year, and all certificates shall expire on September 30 of each year.
- (2) Certificates of use may be issued for a fractional portion of a year, but no certificate of use shall be issued for a fractional portion of a month.
- (3) When there is a change of use, business, business ownership or business name the application for certificate of use shall be treated as new application.

### *90-27.2 Due date for payment of certificate of use fee.*

- (1) Certificates shall be available for issuance by the town, commencing on August 1 of each year. Both the renewal and renewal fee shall be due on October 1 of each year. If October 1 falls on a weekend or holiday, the fee shall be due and payable on or before the first working day following October 1. Those certificates not renewed by October 1 shall be considered delinquent and subject to a delinquency penalty of ten percent) for the month of October, plus an additional five percent penalty for each month of delinquency thereafter until paid; provided, that the total delinquency penalty shall not exceed 25 percent of the fee due.
- (2) Any person exercising the privilege of engaging in or managing any business without first obtaining a certificate of use, if required under this division, shall be subject to a penalty of 25 percent of the fee determined to be due, in addition to any other penalty provided by law or ordinance.

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*90-27.3 Fees.* Fees to be charged for the purpose of administering this division are hereby imposed as follows:

- (1) The town manager or designee shall collect fee. No origination fee shall be charged for a certificate of use to any business within the town limits that has a current and appropriate certificate of use from Miami-Dade County or the town, but the annual renewal fee shall be charged accordingly.
- (2) The town manager or designee shall collect and annual renewal fee for the renewal of existing certificate of use as issued herein.
- (3) An application fee shall be assessed for the processing of a new application for certificate of use.
- (4) Inspections of the applicant's business premises shall be scheduled at the convenience of both the compliance officer/inspector and the business owner.

If the business owner fails to be present at the time of the scheduled inspection or if the compliance officer/inspector is denied and/or unable to gain access to the business premises to conduct the requisite inspection, the business owner may be subject to being charged a re-inspection fee per re-inspection at the discretion of the town manager or designee.

Additionally, after three such attempts and/or denials of access to the premises the town manager or designee may pursue the revocation of any existing certificate(s) of use issued to the subject premises.

*90-27.4 Application procedures.*

- (1) *Procedures for issuance.* No certificate of use shall be issued or granted to any person or location to engage in any business type use named, identified or encompassed by this division unless:
  - a. An application is filed with the town manager or designee on forms provided for that purpose, disclosing the following:
    - i. The applicant's name and address.
    - ii. The name of the business for which a certificate is sought.
    - iii. The name and address of the owner and operator of the business and if a corporation, the names and addresses of each of its corporate officers and it's resident or registered agent.
    - iv. The type or classification of the business and the relationship of the applicant to the business.
    - v. The location in the town where the business will be operated.
    - vi. The date of birth and driver's license number of the owner/operator and any applicable federal employer identification numbers.
    - vii. If the applicant is a corporation or partnership, the full name of the corporation or partnership and the state of incorporation. Applicant must submit a copy of the articles of incorporation.

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viii. If the business is a corporation and is to be conducted under another name, the business name and county of registration under F.S. § 865.09. Applicant must submit a copy of the fictitious name registration.

b. There has been a site inspection of the applicant's business premises, except home based businesses.

c. The town manager or designee, as appropriate, has approved and assigned the zoning use classification.

d. The town manager or designee has verified compliance with all applicable laws and regulations and has collected all applicable fees due to the town.

(2) *Legality of use.* In the event there is a question as to the legality of a use, the town manager or designee, as appropriate, may require affidavits and such other information s/he may deem appropriate or necessary to establish the legality of the use, before a certificate of use will be issued.

(3) *Emergency locator.* The application shall contain a section designated "emergency locator." The applicant shall fill out as part of the certificate of use application the names, business and residence addresses and residence and business phone numbers of the owner, and the manager or other persons to be notified in case of fire or other emergencies. Any changes in such information during the period for which the certificate of use is issued shall be made to the department, in writing.

(4) *Certificate number.* All applications and certificates shall be assigned a number.

(5) *Statement of accuracy.* The application form shall contain the following language:  
"THE UNDERSIGNED HAS CAREFULLY REVIEWED THIS APPLICATION AND ALL INFORMATION CONTAINED HEREIN HAS BEEN FREELY AND VOLUNTARILY PROVIDED. ALL FACTS, FIGURES, STATEMENTS CONTAINED IN THIS APPLICATION ARE TRUE, CORRECT AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. THE APPLICANT ALSO ACKNOWLEDGES AND UNDERSTANDS THAT THE ISSUANCE OF A TOWN CERTIFICATE OF USE IS CONTINGENT UPON A ZONING COMPLIANCE INSPECTION AND IN CONJUNCTION WITH THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY, AND TOWN BUSINESS TAX RECEIPT. FAILURE TO COMPLY WITH THE TOWN'S ORDINANCES MAY RESULT IN REVOCATION OF SAID CERTIFICATE OF USE."

(6) *Name; signature.* The applicant shall print and sign his name to the application immediately after the statement required in subsection (5) above. In the case of a corporation, an officer shall be required to sign the application in his individual capacity and not solely as a corporate agent.

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(7) *Obtaining a certificate of occupancy prior to issuance of certificate of use.* All businesses required to obtain a certificate of occupancy from the town manager or designee pursuant to Section 307 of the Florida Building Code, must do so prior to the issuance of a certificate of use. Any certificate of occupancy issued by Miami-Dade County shall be honored by the town, provided that the occupancy for which the certificate was issued remains the same.

(8) *State license, certification, registration required.* All businesses and professions regulated by the state must submit a copy of their current state license, certification, and/or registration prior to the issuance of their certificate of use thereafter each year at time of renewal. Only the state license itself, or in the case of the state hotel and restaurant commission, the receipt issued by the state, shall constitute proof of current state license.

(9) *Grease trap registration required.* All restaurants are required to obtain a grease trap permit from the Miami-Dade County Department of Environmental Resources Management and shall provide a copy of said permit to the town manager or designee prior to the issuance of any certificate of use.

(10) *Fire inspection required.* All businesses that require an annual inspection from the Miami-Dade County Fire Department shall submit a copy of the county fire inspection report or any such form indicating that said business was inspected and passed the requisite inspection; prior to the issuance of any certificate of use.

*90-27.5 Grounds for denial.*

(1) The town manager or designee, as appropriate, shall have the authority to deny an application for a certificate of use on the following grounds:

a. That the applicant has failed to disclose or has misrepresented a material fact or any information required by this division in the application.

b. That the applicant desiring to engage in the business, as described in the application, has selected a proposed site or type of business activity, which does not comply with the town's zoning ordinance or other laws of the town.

c. That the applicant has failed to obtain a certificate of occupancy as required by Section 307 of the Florida Building Code.

d. The certificate of occupancy for the proposed business location has been denied, suspended or revoked for any reason.

e. The issuance of a certificate of use is based on the applicant's compliance with specific provisions of federal, state, town or county law, with respect to the specific zoning use, and the applicant has violated such specific provisions.

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- f. The applicant has violated any provision of this division and has failed or refused to cease or correct the violation within 30 days after notification thereof.
- g. The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
- h. The applicant is delinquent in the payment of any certification fee imposed under this division; code compliance lien; special assessment lien and/or any other debt or obligation due to the town under state or local law.
- i. The applicant has been denied a town business tax receipt, or the applicant's business tax receipt has been revoked within the last 12 months.
- j. The applicant fails to permit inspection by the town as required and prescribed herein.

(2) Any person, whose application has been denied as provided herein shall have the right to apply for a variance and/or public hearing. Such application shall be governed in accordance with any town or local ordinance or law.

*90-27.6 Renewal of certificate of use.*

(1) Renewed certificates will not be issued until all delinquent payments for any fee imposed under this division, code compliance lien, special assessment lien and/or any other debt or obligation due to the town under state or local law has been paid in full.

(2) The town shall endeavor to notify all certificate holders that their certificates of use are due for renewal. However, if such certificate holder does not receive a renewal notification, it is responsibility to renew the certificate of use prior to October 1, to avoid delinquent charges.

(3) Any current certificate of use may, at the discretion of the department, be renewed for each new certificate year without the need for a new application, provided the applicant signs the following certification:

"I THE UNDERSIGNED HEREBY CERTIFIES THAT THE CERTIFICATE OF USE FOR WHICH I AM NOW APPLYING IS ONE FOR A RENEWAL OF A CURRENT CERTIFICATE OF USE WHICH IS NOW IN FULL FORCE AND EFFECT. I HAVE NOT CHANGED THE AUTHORIZED USE OF THE PREMISES NOR HAVE I MADE ANY PHYSICAL OR STRUCTURAL CHANGES TO THE PREMISES AND DO NOT PLAN TO MAKE ANY PHYSICAL OR STRUCTURAL CHANGES TO THE PREMISES."

(4) Any renewal application in which the applicant changes the authorized use of the premises or makes or proposes any physical or structural changes in the premises shall be reprocessed as if the certificate were a new application.

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### *90-27.7 Display of certificate.*

Each certificate of use issued by the town shall be displayed conspicuously at the place of business and in such a manner as to be open to the view of the public and subject to the inspection of all duly authorized officers of the town. Failure to display the certificate in the manner provided for in this section shall subject the owner/operator to applicable code compliance procedures and/or any other remedies as permitted by law.

### *90-27.8 Duties of building department.*

(1) The building department, among other duties, shall collect all fees and shall issue certificates in the name of the town to all persons or businesses qualified under the provisions of this division and shall:

- a. Verify that the applicant is in compliance with all applicable laws and regulations of the town as prescribed herein.
- b. Investigate and determine the eligibility of any applicant for a certificate and/or the current status of any certificate as prescribed in this division.
- c. Accept applications for certificates of use and review for completeness.
- d. Inspect the applicants' premises for compliance with the applicable building codes identifying any necessary building permits and/or any building code violations.
- e. Coordinate with Miami-Dade County Fire Department and the Department of Environmental Resources Management to obtain copies of respective approvals as necessary.

(2) The town manager or designee, as appropriate, shall among other duties:

- a. Approve and assign the zoning use classification for each business premises.
- b. Examine the books and records of any applicant or certificate holder when reasonably necessary for the administration and compliance of this division.
- c. Notify any applicant of the acceptance or rejection of his application and shall, upon his refusal of any certification, at the applicant's request, state in writing the reasons therefore and deliver them to the applicant.

### *90-27.9 Examination of records.*

It shall be unlawful for any person and/or business to refuse to allow the department to investigate and examine relevant records for the purpose of determining whether such person and/or business has a certificate and/or whether such person and/or business shall be issued a certificate.

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*90-27.10 Approval of business location required.*

No certificate of use shall be issued for any business until the zoning use classification of the business premises is first approved by the town manager or designee, as appropriate; and the department verifies that the applicant is in compliance with all applicable laws, and other regulatory ordinances of the town.

*90-27.11 Lost or stolen certificates; issuance of duplicate.*

A duplicate certificate of use shall be issued by the town manager or designee, as appropriate, to replace any certificate or special permit previously issued which has been lost, stolen, defaced or destroyed without any willful conduct on the part of the certificate holder upon the filing by the certificate holder of an affidavit sworn to before a notary public of this state attesting to that fact. A duplication fee shall be charged for each duplicate certificate.

*90-27.12 Obtaining certificate by false statement.*

Any certificate of use obtained under the provisions of this division upon a misrepresentation of a material fact shall be deemed null and void and the certificate holder who was thereafter engaged in any business under such certificate shall be subject to compliance action for doing same without a certificate of use with the same effect and degree as though no such certificate had ever been issued.

*90-27.13 Illegal activity not approved by certificate.*

The issuance or possession of a valid certificate of use obtained under the provisions of this division does not constitute an approval of any offense, illegal activity or act prohibited by law.

*90-27.14 Revocation of certificate of use.*

The department, in consultation with the town manager or designee, as appropriate, is granted the authority and charged with the duty to revoke, refuse to renew or suspend any certificate of use as follows:

(1) A certificate of use issued under this division may be revoked, suspended, or renewal of said certificate refused on the following grounds.

a. The certificate holder has failed to disclose or has misrepresented a material fact or information required by this division in the application. If an intentional misrepresentation of a material fact is discovered.

b. The certificate holder does not engage in the business as described in the application or has changed the use without authorization.

c. The certificate holder allows the premises to be utilized for solicitation for prostitution, pandering, lewd and lascivious behavior, sale, distribution or display of obscene materials or conduct; sale or possession of any controlled substances or narcotics.

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- d. The certificate of occupancy for the proposed business location has been denied, suspended or revoked for any reason.
- e. The issuance of a certificate of use is based on the applicant's compliance with specific provisions of federal, state, town or county law and the applicant has violated such specific provisions including but not limited to violations of federal, state, or county criminal statutes, and/or violations of county and/or town zoning, business tax receipts, and related ordinances.
- f. The applicant has violated any provision of this division and has failed or refused to cease or correct the violation after notification thereof.
- g. The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
- h. The applicant is delinquent in the payment of any certification fee imposed under this division, code compliance lien, special assessment lien and/or any other debt or obligation due to the town under state or local law.

(2) Procedure.

- a. The department may revoke, refuse to renew or suspend any certificate of use on any grounds set forth herein. The department shall issue a written notice of intent to revoke and/or suspend that shall set forth the grounds upon which the notice is issued, the corrections necessary for compliance, and the certificate holder's right to request an administrative hearing in front of the town special master, and that said appeal must be taken within 30 calendar days of the service of said notice.
- b. The 30 calendar days shall be considered a warning period during which the noticed certificate holder may come into compliance as required herein. If compliance is achieved within said warning period the department shall void the revocation and the certificate holder shall dismiss any pending appeal.
- c. The notice shall be sent certified mail, return receipt requested, to the address provided in the application or the last known address of the applicant. Alternate service may be made by delivery of the notice of hearing to the place of business and/or posting such notice thereon. If there is no appeal taken by the certificate holder as provided herein, the certificate of use shall be automatically revoked. Upon revocation of the certificate of use, the certificate holder shall immediately cease doing business in any location listed therein.



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d. The request for hearing before the special master to appeal the revocation notice shall stay any compliance action and the certificate of use shall remain in effect unless, within the sole discretion of the department, it is determined that the grounds for denial represent an immediate threat to the health, safety, and/or welfare of the public.

(3) Scheduling and conduct of hearing.

a. At any time prior to the expiration of 30 days following the service of the notice of intent to revoke and/or suspend the certificate of use, the certificate holder may request in writing that the department schedule a hearing on the basis that he/she wishes to appeal the pending revocation notice. The office of the town clerk, in consultation with the town special master, shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as practical, provided that the hearing date is not more than 45 calendar days from the date of the town's receipt of the timely request for appeal. The certificate holder shall receive a minimum of 15 days' written notice of the hearing which shall set forth the time and place for the administrative hearing.

b. The hearing shall be conducted by the special master.

c. The proceedings at the hearing shall be recorded by the town clerk.

d. The hearing shall be conducted in an informal manner and the formal rules relating to evidence and witnesses shall not apply, but fundamental due process shall be observed and shall govern the proceedings. Any relevant evidence shall be admitted if the special master finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

e. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witnesses regardless of which party first called that witness to testify; and to offer rebuttal to the evidence

f. Requests for continuances will not be considered if not received by the special master at least seven calendar days prior to the date set for the hearing.

g. The proceedings at the hearing shall be conducted as follows:

i. The department shall present testimony in evidence.

ii. The certificate holder shall then present testimony in evidence.

iii. Each side shall have the right of cross-examination at the conclusion of the other's presentation.

iv. The special master shall have the right of inquiry.

v. Each party shall have the right to present rebuttal evidence.

vi. Upon completion of the presentations, the hearing shall be closed, and the special master shall analyze the testimony and evidence of record and shall render a decision either affirming or denying the determination of the department.

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- h. The decision of the special master shall be reduced to writing and copies thereof shall be furnished to the department and certificate holder within five business days of the hearing.
  - i. This decision may be appealed by writ of certiorari within 30 days of such written order to the circuit court.
  - ii. Upon the time period for such appeal having expired, and no such appeal having been filed, or upon the expiration of such appeal procedures resulting in the affirmation of the decision of the special master, the certificate shall stand automatically and immediately revoked and no new certificate shall be issued. Upon revocation, the certificate holder shall immediately cease doing business in any location listed therein.
- i. No application for a certificate of use shall be considered by the town until one year after the date of any revocation or non-renewal.

*90-27.15 Right of inspection.*

- (1) Any person applying for or obtaining a certificate of use shall be subject to an annual inspection of the place of business.
- (2) For the purpose of enforcing the provisions of this division, code officials, inspectors, and compliance officers shall have the right of inspection provided that said inspection shall be reasonable and scheduled at the convenience of the applicant or certificate holder and the compliance officer or inspector. The office of the town attorney is hereby authorized to seek inspection warrants as necessary.
- (3) Notwithstanding the foregoing, a home based business need only be inspected if a complaint regarding the operation of the business is received and subsequently observed by the town manager or designee.

*90-27.16 Penalties for offenses.*

Any person who violates any section of this division shall be subject to the issuance of a civil penalty to be issued in accordance with the code compliance code.  
(Ord. No. 1558, § 2(Exh. A), 8-10-10)