ORDINANCE # _____

AN ORDINANCE TO AMEND CHAPTER 1, GENERAL PROVISIONS, AND CHPATER 185, ZONING, TO AMEND VARIOUS DEFINITIONS IN CHAPTER 1 ARTICLE 111, DEFINITIONS; TO AMEND CHAPTER 185 TO INCORPORATE THEREIN REQUIREMENTS PREVIOUSLY INCLUDED IN CHAPTER 1 SECTION 1-16, DEFINITIONS; AND PROVIDING FOR SEVERABILITY, PROPER FORMATTING, AND ESTABLISHMENT OF AN EFFECTIVE DATE.

WHEREAS, in order to promote the health, safety, and welfare of the present and future inhabitants of Dewey Beach it is appropriate from time to time to amend the Municipal Code of the Town of Dewey Beach, DE, including requirements in t**he Town's Zoning Code**; and

WHEREAS, in 2008 the Planning Commission recommended changes in Chapter 1 **Article III, Definitions, to the Town Commissioners as part of the Planning Commission's overall review and amendment of the Town's Zoning Code (Chapter 1**85 of Town Code) but such recommendations were not acted upon by the Town Commissioners at that time; and

WHEREAS, the **Town Commissioners approved major amendments to the Town's** floodplain management requirements incorporated in Chapter 101, Flood Damage Reduction of the Town Code, which included certain definitions therein which were different from the definitions of the same words included in Chapter 1 Article III; and

WHEREAS, the height standard adopted in 2009 for the Neighborhood Residential zoning district has a not-to-**exceed "2 ½ story" requirement but there is no definition in the Town Code for what constitutes a "half story"; and**

WHEREAS, the Town Commissioners wish to incorporate all definitions within the Municipal Code in a single place, i.e., Chapter 1 Article III;

NOW, THEREFORE, BE IT RESOVED BY THE TOWN COMMISSONERS OF THE TOWN OF DEWEY BEACH, DELAWARE IN SESSION MET THIS ____th DAY OF _____, 2015, THAT:

SECTION 1. AMEND CHAPTER 1, GENERAL PROVISIONS, ARTICLE III, DEFINITIONS. Amend Chapter I to incorporate amendments to definitions recommended by the Planning Commission after duly noticed deliberations and public hearings held in 2008 and in 2014-2015, including amendments to a) move specific zoning requirements currently in Chapter 1 Article III to Chapter 185, Zoning; **b) to provide for definitions of "half story" and "story" as required for the administration of the Zoning Code height standard; c) general**

updating and clarification, by deleting Chapter 1 Article III in its entirety and replacing with the text in Addendum I of this Ordinance.

SECTION 2. FURTHER AMEND CHAPTER 1, GENERAL PROVISIONS, ARTICLE III, DEFINITIONS. Further amend Chapter I Article III by adding thereto in alphabetical order all definitions incorporated in other Chapters of the Municipal Code including those contained in Chapter 101, Flood Damage Reduction, as amended 12/13/2014 except for the definition for "structure" which is already incorporated into Section 1–16, and Chapter 185, Zoning, Section 185–27 Definitions [to General Sign Regulations].

SECTION 3. FURTHER AMEND CHAPTER 1, GENERAL PROVISIONS, ARTICLE III, DEFINITIONS. Further amend Chapter I Article III by adding thereto in alphabetical order all definitions incorporated in other Chapters of the Municipal Code with separate Sections incorporating "Definitions", including definitions under:

- Code of Conduct (Section 10–2)
- Emergency Management (Section 16–2)
- Alarms (Section 53–1)
- Animals (Section 60–1)
- Handbills (Section 108–1)
- Solid Waste (Section 153–1)
- Streets and Parking (Section 158–1)
- Tattoo and Body Piercing Establishments (165–1)
- Taxation (Section 167–1)
- Trees (Section 173–1)
- Cable Television Franchise (Section A188–1)

SECTION 4. AMEND CHAPTER 185, ZONING, TO INCORPORATE THEREIN ZONING REQUIREMENTS CURRENTLY LISTED IN CHAPTER 1 SECTION 1-16, DEFINITIONS. Amend Chapter 185 to include those zoning requirements currently included in Chapter 1 Section 1–16, Definitions, including:

A. FILLING STATION. Insert the following text under 185–25 D. Conditional uses. See Table 3, Uses in Resort Business Districts. The following additional conditions shall apply:

"(2) Filling Station – A retail establishment that provides retail sales of gasoline and diesel fuels and possibly providing routine motor vehicle services and operation of a convenience store provided that:

A. Product sales and services are limited to the retail sale of petroleum–based and other vehicle–related consumable products and the routine servicing of motor vehicles, such as the retail sales and/or installation of automotive accessories, automobile washing by hand, undercoating and rustproofing services, waxing and polishing of automobiles, tire changing and repairing (excluding recapping), battery service, changing and replacement (excluding

repair and rebuilding), radiator cleaning and flushing (excluding steam cleaning and repair), and State inspection;

B. The following operations shall only be performed if conducted within a completely enclosed building: brake servicing limited to servicing and replacement of brake cylinders, lines and brake shoes; wheel balancing; the testing, adjustment and replacement or servicing of carburetors, filters, generators, points, rotors, spark plugs, voltage regulators, water and fuel pumps, water hoses and wiring;

C. Any convenience food store operation on the lot or parcel shall also provide for the retail sale of petroleum–based and vehicle–related products as part of its normal operations.

D. In no case shall the following be permissible as part of any filling station or automobile service station operation: automobile wrecking; automobile or auto parts recycling; auto body repairs; automobile painting; the parking or storing of inoperable, wrecked or unregistered vehicles; the parking or storing of motor vehicles for hire, such as taxis, limousines, or tour vans or buses; parking of motor vehicles for a fee; or the operation, parking or storing of more than one towing vehicle."

B. EATERY. Insert as an amendment to 185–25 D(1) (a) [4]

185–25 D(1) (a) [4] Eateries or cabarets "provided that:

a) Alcoholic beverages shall be not be served nor shall foods containing or infused with alcohol be served;
b) If indoor seating is provided, it shall be limited to a maximum of 35 patrons;
c) A minimum of one handicapped unisex rest room shall be provided. Said rest room shall have unimpeded access directly from the public area of the eatery and not through the food preparation area or storage area.
d) If outdoor or unenclosed tables or chairs are provided by the eatery, the hours of operation of the outdoor or unenclosed area shall not extend beyond 11:00 p.m.
e) Outside loud speakers for the amplification of sound shall not be permitted;
f) Portable toilets shall not be permitted;
g) Hours of operation shall not be earlier than 6:00 a.m. and not after 1:00 a.m of the following day;
h) Additionally, operation of an eatery or cabaret shall meet any and all other conditions established by the Town Commissioners at the time of any initial or subsequent approval: [Added 4–11–1992 by Ord. No. 228; amended 3–11–1995 by Ord. No. 321]"

C. HOTEL/MOTEL. Insert under 185–25 (D) Conditional uses

"185–25 (D) No new Hotels/Motels. Defined as any business providing lodging for transient patrons and regulated under Delaware State Code _____, no new hotels or motels shall be permitted in the Town of Dewey Beach per Ordinance No. 430 enacted 4/8/2000. Existing hotels/motels shall conform to the following: [Amended 12–13–1986 by Ord. No. 87 Editor's

Comment [DSK1]: Need appropriate Del. Code citation here

Note: This ordinance also repealed the definitions of "motel," "motor court," "motor lodge" and "tourist lodge."]

a) Is operated exclusively as a place of temporary lodging on a daily basis;
b) Is open to the public in its entirety rather than to a limited group, except that one room or suite may be reserved for the use of the resident manager;
c) Contains a public lobby and guest registration area in which all reservations are recorded;
d) Provides full–time on–site management during the summer season, daily linen service, daily housekeeping of all guest rooms and suites. The on–site management shall be responsible for the conduct of all guests, shall coordinate all rentals from realtors or travel agents, shall establish via room registration or rental agreement the maximum occupancy per room, and shall see that all guests are aware that exceeding the allowable occupancy shall be subject to immediate eviction and loss of rental;
e) Limits the number of guest rooms and/or suites to the number approved by the building permit;
f) Has available for assignment at least one parking space per guest room plus two for the office;
g) Is subject to the Delaware Division of Revenue hotel or motel room tax;
h) Does not provide self–contained suites or groups of rooms with separate cooking and sleeping areas except that it may offer self–contained efficiency units (see Definitions in Section 1–16);
i) Shall be subject to the supplementary height, area and bulk regulations in Chapter 185, Article VIII."

D. OUTSIDE SERVICE AREA. Amend 185–25 D (1)(a)[3] to read:
"185–25 D (1)(a)[3] Any commercial, outdoor, open air operation, or outside service area provided that:

a) There shall be no stand–up consumption of alcoholic beverages;
b) There shall be no external speakers or amplifiers;
c) Any interior speakers on the premises shall not be directed toward such outside service area(s);
d) The area shall be cleared of patrons by 11:00 p.m. [Added 4–11–1992 by Ord. No. 228]"

E. HOME OCCUPATION. Insert under 185–23 C. Permitted accessory uses. See Table 1, Uses in Residential Districts:

"(1) HOME OCCUPATION. Any home occupation which is conducted in a manner such that the dwelling housing the occupation is indistinguishable from dwellings with no business use and which meets the following standards is permitted as an accessory residential use:

A. Home Occupation. A home occupation may include activities similar to: the professional office of a physician, dentist, lawyer, business or technology consultant, engineer, architect,

accountant or salesman; dressmaking, custom baking, or day care or babysitting for no more than five children provided the operator is duly licensed by the State for the purpose of providing child day care but not activities that might be referred to as a nursing home, convalescence home, rest home, restaurant or café or tea room, tourist home or bed and breakfast, massage service or therapeutic massage, or such similar establishments; studio space for a artist or craft person or musician to work in and to provide private instruction to one or two pupils at a time.

B. Licensing. All home occupations shall be registered with the Town of Dewey Beach and hold a valid Town Business License and appropriate State of Delaware licensing.

C. Employees. **The owner and primary operator (the "Operator") of the home occupation shall** be a full-time resident of the dwelling unit and subject to the following exceptions shall not employ any individuals other than family members who also are full-time residents of the dwelling unit.

   a. No more than one (1) non-family or non-resident, on-site employee is permitted on the premises at one time.

   b. A home occupation which provides a service that occurs off-site may have additional employees, provided such employees meet and work off-site and not at the subject residence.

D. Customers/clients. The operator may meet with customers at the site provided that the frequency and consistency of traffic to and from the site in relation to the home occupation **does not interfere with the community's comfort, safety, or enjoyment of the neighborhood** around the subject property as a residential area or create a visual or traffic annoyance to persons of normal sensibilities such that a public nuisance is created. High volume of visits and traffic to and from the site shall be prima facie evidence that the home occupation is not indistinguishable from other dwellings and creates a public nuisance in the residential neighborhood, in violation of these requirements.

E. Location, size and modifications. No home occupation shall be conducted outside the dwelling unit. The total area used to accommodate the home occupation shall not exceed twenty-five (25) percent of the total gross floor area (GFA) of the principal residential dwelling. No structural alterations or enlargements shall be made to the dwelling unit for the primary purpose of conducting the home occupation.

F. Parking. Adequate on-site, off -street parking shall be provided for all employees, customers, clients and/or pupils. The principal driveway serving the residence shall act as the parking area. Only the principal driveway may be used for parking in conjunction with the home occupation.

G. Hazardous materials. No toxic, explosive, flammable, radioactive or other restricted materials shall be used, sold or stored on the site in connection with the home occupation.

H. Outside storage. No outdoor display or storage of materials, goods, supplies or equipment related to the home occupation shall be permitted.

I. Deliveries and pick-ups. Truck deliveries or pick-ups of supplies or products associated with the home occupation shall occur only within the hours of 8:00 a.m. and 7:00 p.m. Vehicles used for delivery and pick-up are limited to those normally servicing residential neighborhoods. No regular tractor trailer delivery shall be permitted.

J. Signs and displays. No display of any products or operations that would create external evidence of the operation of the home occupation is permitted. No more than one (1) name plate sign no larger than 1.5 square feet in area displaying the name and street address of the occupant of the property and name of the permitted home occupation. No marked service vehicle, trailer or other equipment used in conjunction with the home occupation shall be parked on the property or contiguous street right-of-way so as to identify, advertise or otherwise attract attention to the home occupation.

K. Manufacturing, repairing, mechanical work. No manufacturing, repairing or other mechanical work shall be performed outside the dwelling unit. When such activity is conducted inside the dwelling unit, it shall be conducted in such a way that no noise, heat, glare, odor, vibration, electromagnetic interference or smoke shall be perceptible at or beyond the property line.

L. Penalties. Any person who engages in an unregistered home occupation or is found in violation of the requirements listed herein shall be guilty of a civil offense (see Chapter 80, Civil Offenses, for applicable fines and appeal process."

SECTION 5. SEVERABILITY. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 6. FORMATTING. Minor changes of formatting, grammar, and typography may be made to assist incorporating these changes into the Town Code.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective immediately upon adoption.

Adopted by at least a majority vote of all Commissioners of the Town of Dewey Beach on _____, 2015.

_____
DIANE HANSON
Mayor

Attest: _____
MARC APPELBAUM
Town Manager

Synopsis: This ordinance amends Chapter 1, General Provisions, of the Municipal Code of the Town of Dewey Beach by amending various definitions in Article III, Definitions (Sections 1–15 and 1–16) and by including therein definitions in Section 101–2 under flood damage reduction and in Section 185–27 under the Zoning Code's General Sign Regulations and by importing those definitions from other Chapters of Town Code where there are specific sections of code dedicated to "Definitions"; amends Chapter 185, Zoning, by incorporating therein various zoning requirements previously contained in various definitions in Chapter 1 Section 1–16, Definitions.

ADDENDUM 1

RECOMMENDED AMENDMENTS CHAPTER 1 ARTICLE III

SEE SEPARATE FILE