

# TOWN OF BENNINGTON, VERMONT

## ARTICLE 4. VENDORS ORDINANCE

### ARTICLE 4-1. LICENSE REQUIRED

A. It shall be unlawful for any person to engage in the business of vendor or transient merchant as defined herein within the legal limits of the Town of Bennington without first obtaining a license under the provisions of this ordinance. For Community Events (as defined below), the sponsoring organization shall secure a single license for all vendors or transient merchants involved in such activity.

### ARTICLE 4-2. DEFINITIONS

A. VENDOR. A vendor is defined as a person who, traveling from place to place within the Town of Bennington, or remaining in one location not occupying a building or structure, carries goods, wares or merchandise on foot, and/or utilizing a wagon, automotive vehicle, pushcart, trailer, van, railroad car or any other type of conveyance, and offers to or actually sells, barter, or delivers such goods, wares or merchandise, whether such a person acts for himself or as agent for another person, firm or corporation.

B. TRANSIENT MERCHANT. A transient merchant is defined as a person who hires, leases or otherwise occupies a building or a portion thereof, or any type of structure or shelter for the purpose of conducting an auction or sale of goods, wares or merchandise on a temporary basis, whether such a person acts for himself or as agent for another person, firm, or corporation.

C. TEMPORARY. The word temporary shall mean any activity conducted for a period of three (3) or fewer days in any one (1) week, or if more than three (3), during four (4) or fewer weeks in any three (3) month period.

D. CBD (Central Business District). The CBD as used herein shall mean that area shown as the CBD on the Town zoning map adopted March 23, 1982, and amendments thereto.

E. COMMERCIAL ZONE. Commercial zone as used herein shall mean those areas shown as commercial on the Town zoning map adopted November 14, 1995, and amendments thereto.

F. GOODS, WARES OR MERCHANDISE. The phrase "goods, wares or merchandise" as herein used shall include also meats, fish, vegetables, fruits,

garden truck, farm produce, popcorn, ice cream, sodas, beverages, or other articles of food or refreshment.

G. FLEA MARKET. A flea market is defined as any renting or leasing of a booth, lot, or space on a temporary basis for the selling of goods, old or used, by the renter.

H. PERSON. The word person shall include firm, corporation, or other business entity.

I. BULBOUT. Pedestrian plazas that project out from the sidewalk.

J. COMMUNITY EVENT. An activity, event, fair or exposition open to the general public, such as Mayfest, Midnight Madness, the Bennington Battle Day celebration, and the Antique Car Show sponsored by a civic, philanthropic, service, religious or government organization.

### **ARTICLE 4-3. EXEMPTIONS**

A. The following shall be exempted from obtaining a license as required herein, but shall comply with all other provisions of this ordinance:

(1) The sale and distribution of newspapers or magazines, or the soliciting of subscriptions for same.

(2) The sale of produce, provided such produce is actually grown by the seller or members of his immediate family, or by his employees, and sold from the producer's own property. The burden of so proving shall be on the seller and not on the Town of Bennington.

(3) Sales to or orders taken from manufacturers, merchants and dealers for the purpose of resale only.

(4) Sidewalk sales by a merchant with an established non-temporary place of business, provided that said sidewalk sale does not occupy more than one half of the width of the sidewalk and is confined to an area not exceeding the frontal width of said merchant's place of business.

(5) The sale or auction of goods, wares or merchandise by the authorized representatives of religious, charitable, educational, service or other non-profit or tax exempt

organization under the laws of the State of Vermont shall be exempt from the payment of any fee as required herein. Such organization shall submit in writing to the Town Manager the name and purpose of the cause for which such activity is sought, the name and address of the immediate director of such activity, and the period during which such activity is to be carried on in the Town of Bennington. Excluding fees, such activities shall be subject to all provisions of this ordinance. The Manager, however, may waive any or all provisions of the ordinance as it pertains to such activities exempted under this paragraph.

(6) The sale or auction of used goods at a private residence by the owner, tenant or agent thereof.

(7) The soliciting of orders, with or without the display of samples, at a private residence for future delivery.

(8) The provisions of this ordinance shall not be construed as interfering with the sale of any article in interstate commerce.

#### **ARTICLE 4-4. APPLICATION FOR LICENSE**

A. Anyone required to be licensed by the provisions of this ordinance shall make written application to the Town Manager's Office on forms provided by the Town. Such application shall include:

(1) A detailed description of the particular business, trade, occupation or purpose for which application is being made.

(2) The name, legal residence and telephone number of the applicant.

(3) The period of time for which the applicant desires a license.

(4) Description of all vehicles and equipment to be used in conducting the licensed business, including type, size, materials, color, signs, method of transport and registration numbers where applicable.

(5) Statement of prior business activity.

(6) A statement of the location of operation requested. If on private lands, proof of permission by the owner and a sketch plan indicating placement of all vehicles and equipment.

(7) If different from the applicant, the name, address, and phone number of any person or entity employing the applicant.

(8) Proof, including identification numbers, of compliance with state statute, including all required registrations or licenses from the Secretary of State's office, the Vermont Tax Department, the Vermont Health Department, and the Vermont Department of Motor Vehicles.

(9) The names of all persons to be covered by this license.

(10) Such other information as may be required by the Manager's Office.

B. Any application for license may be referred to the Chief of Police, who shall undertake such investigation of the applicant as he deems necessary for the protection of the public good. The Chief shall report the results of this investigation to the Manager's Office for consideration in the disposition of the license application.

C. No application for a license under this ordinance shall be made prior to December 1 of the year proceeding that for which it is sought.

#### **ARTICLE 4-5. ISSUANCE OF LICENSE**

A. Upon final review of the application, compliance with the provisions of this ordinance, and payment of a fee as called for herein, a license may be issued.

B. The Manager's Office shall, as a function of issuing licenses under this ordinance, be empowered to assign spaces and impose such restrictions as are called for herein.

C. The Manager's office may waive any or all of the requirements of this ordinance as it pertains to Community Events.

D. Licenses for and assigned spaces in the CBD, as described elsewhere in this ordinance, shall be reserved through March 31 for holders of said license and space in the previous year. After that date, said license and space may be issued to any successful applicant on a first come, first served basis.

E. All other non-reserved spaces in the CBD may be issued to any successful applicant on a first come, first served basis.

F. If a vendor or transient merchant as defined herein engages in two or more separate and distinct operations, separate licenses shall be issued for each operation, each subject to all provisions of this ordinance, even though each provides the same goods, wares or merchandise.

#### **ARTICLE 4-6. DENIAL OR REVOCATION OF LICENSE**

A. If a license is denied, the applicant may, upon written notice to the Manager, request a hearing before the Select Board, who may uphold the decision, or instruct that license be issued. Such a hearing shall be held after ten days written notice to applicant to address shown on his application.

B. Any license under this ordinance may be revoked at any time by the Select Board following the process as specified herein.

C. A license issued under this ordinance shall not be revoked, canceled or suspended until a hearing hereon shall have been held by the Select Board or a majority thereof. Written notice of the time and place of the hearing shall be served upon the licensee at least ten calendar days prior to the date of the hearing. Notice shall also contain a brief statement of the grounds being cited for revocation, cancellation or suspension of license. Such notice shall be sent certified mail, return receipt requested, to the address appearing on the license, or shall be delivered in person to the licensee. Proof of notice of delivery shall be the licensee's signed receipt thereof, or the testimony of a person who witnessed such delivery.

D. At such hearing, the Select Board shall inquire into the reasons for the proposed action on said license, shall hear all persons interested therein, and, after due deliberation, may uphold such license or revoke, cancel or suspend such license for any period of time the Board deems proper.

E. No licensee, nor anyone acting in his behalf, who, having had a license revoked, canceled or suspended, may be granted a license under the provisions of this ordinance without the approval of such application by the Select Board.

F. No unused portion of any license fee shall be refunded, returned or credited to the licensee upon revocation, cancellation or suspension of license.

G. A license under this ordinance may be revoked, canceled or suspended for any of the following causes:

- (1) Fraud, misrepresentation or false statement contained in any application for license.
- (2) Fraud, misrepresentation or false statement in the

conduct of any business or activity authorized by such license.

(3) Any violation of any provision of this ordinance or the terms of the license.

(4) Any violation of any State or Federal laws governing the licensed operation.

(5) The conducting of the licensed business by the licensee or his agent, servant, or employee, in any unlawful, disorderly or improper manner, or in such manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public.

(6) Violating or abusing the purpose for which such license has been issued to the detriment of the public, or the use of a license for a purpose foreign to that for which it was issued.

#### **ARTICLE 4-7. CONTENTS OF LICENSE; DISPLAY**

A. A license issued under this ordinance shall be on a form containing the following:

- (1) Name and address of licensee.
- (2) Name and address of employer if other than licensee.
- (3) Statement of purpose of license and the type of activity permitted thereby.
- (4) Statement of locations permitted under the license.
- (5) Effective period of license.

B. A license issued under this ordinance, and any license, certificate or registration required under federal and/or state laws governing the licensed activity shall be displayed in plain sight at the location of the licensed activity during all hours of operation.

#### **ARTICLE 4-8. FEES; EXPIRATION; TRANSFERABILITY**

A. Fees as called for herein shall be paid to the Manager's office prior to the issuance of any license under the provisions of this ordinance.

B. Fees for each license issued under this ordinance shall be as follows:

ANNUAL LICENSE: 300. per year payable upon issuance of license. The twelve month period shall begin upon issuance and end twelve months thereafter except that the license period shall not go beyond December 31 of the given year.

SIX MONTH LICENSE: \$200. payable upon issue of license. The six month period shall begin upon issuance and end six months thereafter except that the license period shall not go beyond December 31 of a given year.

THREE MONTH LICENSE: \$100. payable upon issuance. The three-month period shall begin upon issuance and end three months thereafter except that the license period shall not go beyond December 31 of a given year.

C. Licenses shall be valid only on the dates indicated on the license. All licenses will expire on the date indicated on the license.

D. No license shall be assignable or transferable, and unauthorized use of a license by the licensee or another entity is prohibited.

#### **ARTICLE 4-9. INSURANCE**

A. It shall be a condition of the license that the licensee shall be liable to any person who shall receive actionable injury through the exercise of the licensed activity and shall also be liable to indemnify and save harmless of the Town in all things relative to such activity. Prior to the issuance of a license the submission to the Town Manager of the following is required: The vendor(s) shall enter into a license agreement with the Town and provide a certificate of insurance naming the Town of Bennington as an additional insured which shows liability insurance for bodily injury and property damage in the amount of at least five hundred thousand dollars (\$500,000.00) for personal injury to or death of any one or more person in any one accident, and for damage to property in the amount of at least five hundred thousand dollars (\$500,000.00) resulting from any one accident.

#### **ARTICLE 4-10. REGULATIONS**

A. All equipment and methods of operation shall conform to all provisions of this ordinance, and to all applicable statutes and regulations of the State of Vermont and its agencies, including but not limited to the office of the Secretary of State, the Vermont Tax Department, the Vermont Department of Health, and the Vermont Department of Motor Vehicles.

B. No vendor, while conducting activities subject to this Ordinance, shall make or cause any noise that is determined to be in excess of that provided in the Noise

Control Ordinance, Article 24. In the CBD no vendor shall shout, cry out, blow a horn, ring a bell, or use any sound device, including any loud speaking radio or sound amplifying device while conducting an activity subject to this Ordinance.

C. All traffic laws of the State of Vermont and the Town of Bennington shall be adhered to. No stopping or standing, or no semi-permanent location shall be permitted so as to block or endanger vehicular or pedestrian traffic, or to block a crosswalk.

D. No vendor shall locate within three hundred (300) feet of any school property on any school day, including summer sessions, between 8:00 a.m. and 4:00 p.m., except upon written permission by the appropriate school agency.

E. No seller of goods, wares or merchandise shall operate within one hundred (100) feet of the entrance to an established business selling like goods, wares or merchandise, except if no other space is available. Once a vendor is established in a location, the vendor cannot be denied a license renewal or removed from that location except as provided herein.

F. A vendor may be removed from a designated location in the CBD when changes are made to the streetscape design that either eliminate the location or make the location hazardous to pedestrian or vehicular traffic. A reasonable attempt will be made to relocate the vendor in a comparable location.

G. No vendor shall operate on private property without express permission of the owner. Such activity shall be subject to the provisions of this ordinance.

H. No vendor shall operate on public lands except as noted:

(1) Designated vending spaces in the CBD (See paragraph M.1.).

(2) Curbside vending outside the CBD from vehicles, providing that such locations are occupied for no more than ten (10) minutes at any one time, and that the traffic law provision of this code is upheld.

(3) At events on Town or Public School property with the express written permission of the Town or the appropriate school system.

I. No vendor shall operate on private property in any area identified as a Residential District in the Bennington Zoning Bylaw.

J. A vendor shall operate only during the following hours:

(1) In the CBD and commercial zones of the Town of Bennington, between the hours of 9:00 a.m. and 11:00 p.m.



(2) In all other areas, between the hours of 9:00 a.m. and 8:00 p.m.

(3) Specific promotions or events may be exempted from these hours by the Town Manager, who shall designate such alternate hours as are deemed appropriate.

K. Each vendor shall be responsible to maintain his location in a clean, sanitary condition. Adequate receptacles will be provided by the licensee for the disposal of trash or garbage.

L. No live animals, except those used to assist a handicapped vendor, shall be used in connection with the licensed activity.

M. All equipment is to be removed at the end of each work day.

N. In addition to the other provisions of this code, vendors operating within the CBD shall abide by the following:

(1) Only those locations so designated shall be used for licensed activity in the CBD. Specific locations will be designated by the Select Board from time to time, which locations may include sidewalk locations, bulbout locations and/or curbside (parking stall) locations, and shall be indicated on a map filed in the Town Office. In the case of the bulbout locations the Select Board shall designate the specific area on the bulbout that a vendor may occupy, but in no case shall such locations be within 3 feet of the bulbout curb line. Holders of a license in the CBD shall operate only from that location indicated on the license.

(2) No vendor within the CBD shall hold more than one license for the CBD, nor shall a licensee be assigned more than one CBD location.

(3) All sidewalk vendors shall operate as close as reasonably possible to the curb line, and shall not obstruct pedestrian traffic or egress from parked vehicles.

(4) All bulbout vendors shall operate within the specific area designated by the Select Board pursuant to paragraph N.1 and shall not obstruct motorists' view of pedestrians preparing to cross the road at a crosswalk.

(5) Except as specified below, no motor vehicles shall be used while conducting operations in the CBD. Motor vehicles used

to tow equipment to the place of business shall not remain attached to the vending equipment, and shall be removed to appropriate off-street parking. This clause shall specifically prohibit the sale or display of goods, wares or merchandise from motor vehicles, including vans and trucks in the CBD.

(6) No gas powered generators, or other motors producing objectionable noise or fumes will be permitted in the CBD.

(7) The use of trees, meter posts, light poles, or any other street fixture in conjunction with a vending operation is prohibited. However, the Town Manager may, but is not required to, allow a duly licensed vendor to use the electrical outlets located on the light poles provided such vendor complies with all applicable building, electrical and life safety codes and pays the Town an amount set by the Town Manager for the use of the electricity.

(8) No vendor shall operate during Community Events, such as Mayfest and the Bennington Battle Day celebration and other Community Events designated by the Town Manager, unless such vendor obtains written permission from the organization sponsoring the Community Event.

- O. Coin/Currency operated vending machines (except for machines that dispense newspapers) shall not be permitted in the CBD.

#### **ARTICLE 4-11. EQUIPMENT**

A. All equipment for use in a licensed activity shall be sized and constructed in accordance with the provisions of this section.

B. All materials and surfaces shall be finished in a weather resistant manner. No exposed, unpainted or untreated wood or metal shall be used.

C. All fasteners and hardware shall be weather resistant, and shall minimize or prevent risk of snagging clothes and/or causing bodily injury.

D. All surfaces, including sides, corners, roofs and overhangs shall be constructed and finished so as to minimize or prevent the risk of snagging clothing and/or causing bodily injury. All corners shall be rounded, with no sharp edges.

E. All fabric and cloth used in conjunction with the equipment shall be appropriate for the intended purpose, shall have finished edges, and shall be securely fastened to prevent tearing and/or removal by the elements.

F. All carts and apparatus shall allow vision through from the sidewalk to the street and from the street to the sidewalk below the roof line if so equipped to a level five (5) feet above the ground, and shall allow such through vision above said level if not roofed.

G. All equipment adopted for sidewalk or bulbout use shall occupy a maximum length not exceeding nine (9) feet, inclusive of all projections, handles wheels, bumpers and ancillary equipment, but excluding overhangs as defined herein, and shall be approved by the Town prior to installation. All sidewalk equipment, including seating, if applicable, shall be located with its longest dimension parallel to the street, but in no case shall its placement reduce the sidewalk's clear passage width to less than five (5) feet.

H. All other equipment shall occupy a maximum area of seven (7) feet by twelve (12) feet, inclusive of all projections, handles, wheels, bumpers and ancillary equipment, but excluding overhangs as defined herein. This will allow for a comfortable fit within a curbside parking space. All such equipment shall be placed as close to the curb line as possible, with the longest dimension parallel to the curb unless the longest dimension does not exceed 7'. Vendors shall provide appropriate barricades to reduce risks from passing vehicles. Antique or special interest vehicles may exceed the dimensions noted if a Select Board waiver is obtained at a regular or special meeting.

I. The licensed occupant of any curbside vending location may, for an additional fee to be determined by the Town, utilize the sidewalk space adjacent too and alongside the curbside space for movable seating up to the maximum length of the designated curbside space, or the actual length of the occupied parking stall, whichever is smaller. The maximum allowed seating capacity at any vending location shall not exceed eight seats. No seating shall be allowed other than noted here. For food vendors, seating may be provided for a maximum six (6) months of a given license period as provided by the Vermont Department of Health Regulations.

J. No roofed equipment shall exceed eight (8) feet in height, inclusive of all projections, equipment, roof shapes, canopies and umbrellas, all other equipment shall be a maximum of five (5) feet in height, excluding detachable canopies and umbrellas, which shall not exceed eight (8) feet in height. All heights shall be measured from the ground.

Antique or special interest vehicles which exceed the height restriction may be permitted provided they otherwise conform to this Ordinance.

K. Awnings, canopies and umbrellas shall have their lowest edge no less than six feet, 8 inches (6'8") above the ground, and may extend up to one and one-half (1 ½) feet beyond all sides of the equipment, but shall not extend into the highway traveled way.

L. All equipment intended for over-the-road transport shall conform to the laws and regulations of the State of Vermont and Vermont Department of Motor Vehicles.

M. All equipment shall be stationary while in use, and shall be secured in an appropriate manner to prevent tipping, rolling or unstable operation.

N. The total area of signs shall not exceed ten (10) square feet, with the longest dimension no greater than four (4) feet. All signs shall be neatly and professionally lettered. All fixed signs shall be weather resistant, and shall conform to the provisions of the Sign Ordinance of the Town of Bennington.

O. All back stock and inventory not intended for display shall be hidden from view.

P. All equipment and areas of operation shall be maintained in a neat, clean and orderly fashion.

Q. All cooking equipment used by food vendors shall be of stainless steel construction.

#### **ARTICLE 4-12. ENFORCEMENT; PENALTY**

A. The Manager may designate a person or person(s) as administrative and enforcement officer(s) for this ordinance, who may accept all applications, process, approve or disapprove, and oversee enforcement.

B. In addition, it shall be the duty of any police officer of the Town of Bennington to require any person engaged in an activity governed by this ordinance to be duly licensed, to produce said license, and to enforce these provisions against any person found to be in violation thereof.

C. Persons violating any of the provisions of this ordinance shall, upon conviction, be subject to a fine not to exceed two hundred dollars (\$200) per day for each infraction, plus prosecution costs, and upon default thereof, be subject to imprisonment for a period not to exceed thirty (30) days. In addition, any violation shall be subject to license revocation, cancellation or suspension as called for herein.

#### **ARTICLE 4-13. SEVERABILITY**

A. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part hereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such a decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The Select Board hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or

phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or ineffective.

#### **ARTICLE 4-14. PRIOR ORDINANCE AND EXTENSION FOR COMPLIANCE**

A. Any provisions of any ordinance of the Town of Bennington in effect at the time of enactment of this ordinance governing any activity included in this ordinance is hereby revoked. Any licenses currently in effect under such revoked provisions are also hereby revoked. Any fees paid for such revoked licenses will be pro-rated to the payment of fees for licenses called for herein, but in no case shall fees be refunded.

B. Any vendor or transient merchant licensed under the previous vendors ordinance who's equipment is in violation of Article 4-11 of this ordinance shall be given eighteen (18) months to bring the equipment into compliance. In no event, however, shall said vendor or transient merchant be exempt from any other provision of this ordinance.

This ordinance shall be entered in the Select Board Minutes, posted in at least five conspicuous places within the Town of Bennington, and published in the Bennington Banner, a newspaper circulating in this Town, not later than 14 days from adoption hereof as stated below.

THIS ORDINANCE IS HEREBY ADOPTED by the Select Board of the Town of Bennington this 9th day of November, 2009 and shall, unless a petition is filed as provided by law, become effective upon the expiration of 60 days after said date.