

TOWN OF FITZWILLIAM

VENDORS ORDINANCE

The Street and Sidewalk Vendors Ordinance adopted by the Town of Fitzwilliam Board of Selectmen, pursuant to RSA 31:102-a on April 28, 1999.

Section 1. Authority. The Board of Selectmen of the Town of Fitzwilliam adopts this Ordinance under the authority granted by RSA 31:102-a.

Section 2. Findings. The Selectmen find and declare that:

- A. The primary purpose of the public streets and sidewalks is to facilitate vehicular and pedestrian traffic.
- B. Responsible regulation of street and sidewalk vending is necessary to protect the public health, safety and welfare.
- C. This ordinance is not intended to regulate the exercise of pure speech, but merely regulates activities that are commercial in nature.

Section 3. Definitions. In this Ordinance:

- A. “Administrator” means the Code Enforcement Officer or other individual designated by the Selectmen to act on applications and otherwise administer this ordinance.
- B. “Planning Board” means the Fitzwilliam Planning Board.
- C. “Selectmen” means the Fitzwilliam Board of Selectmen
- D. “Vendor” means any person engaged in selling, or offering for sale, food, beverages, merchandise, or services for a stand or motor vehicle, or from his person, on the streets or sidewalks of the Town; or from temporary or transient sales locations within the Town; or while going from place to place within the town; and includes any person defined as a hawker, peddler, or itinerant vendor under RSA 320 or 321.
- E. “Vendor License” means authorization to conduct vending activities from multiple temporary sales locations on a single property issued under Section 6 (C).
- F. “Vendor Permit” means a permit issued for a single temporary vending location under Section 6 (B) or for vending while going from place-to-place under Section 5.

- G. “Vending Site” means a temporary vending location for a vendor permit or a specific location at which a sub-vendor engages in vending under a vendor license.
- H. “Sub-vendor” means one who is operating under a vendor license held by a vendor.

Section 4. Compliance Required.

- A. No person may sell, offer for sale, or take orders for services or merchandise from any temporary location or while going from place-to-place in the Town without:
 - 1) Possessing a current, valid State permit when required by RSA 320 or 321, or any other law;
 - 2) Being authorized under a current, valid local license or permit when required under this Ordinance; and
 - 3) Complying with the Ordinance and other Town Ordinances and all lawful regulations adopted by the Selectmen, Police Chief, Health Officer or other Town officials;
 - 4) Submit to and successfully pass a NH and FBI Criminal History Record Check as provided in Section 8. of this ordinance.
- B. This Ordinance shall not be deemed to require permits or licenses for deliveries of goods, produce or wares made in the ordinary course of business by entities granted permits under this Ordinance or in connection with a transaction which is not subject to this Ordinance.
- C. Any vendor granted a license or permit under this Ordinance (including a sub-vendor) shall at all times operate the vending business in a manner which will not interfere with the public safety on the streets and sidewalks and so as to create minimal inconvenience to the public. A permittee or licensee shall operate the business only from such places and at such time as are authorized in the permit or license.

Section 5. Place-to-Place Vending; Permit Required.

- A. Vending activities subject to this ordinance may be conducted while going from place-to-place in the Town only by an individual who obtains a permit issued under this section, remaining in one location no longer than 30 minutes.
- B. Any person seeking a permit for vending from place-to-place shall apply to the Administrator on a form provided by the town. The application shall include:
 - 1) Name and home and business address of the applicant;
 - 2) Name and address of the owner of the vending business, if other than the applicant

- 3) A description of the merchandise or services to be offered for sale;
- 4) A description of the proposed route(s) and hours of operation of the vending business, and the general area in which the vending is proposed; and
- 5) A description of any motor vehicle to be used in the vending business, including registration and title date, if applicable.

Section 6. Vending from Temporary Locations: Permit/License Required.

- A. Vending from a temporary sales location may be conducted by an individual who obtains a permit for such vending from a single location under Paragraph (B) or by an individual or entity who obtains a license for multiple vending sites on a single property under Paragraph (C). No permit or license may be issued for a temporary sales location until the vending site(s) from which the vending will occur has been approved pursuant to Section 7.
- B. A vending permit for a single temporary sales location may be issued to an individual under this paragraph. Any person seeking a permit for vending from a single sale temporary sales location shall apply to the Administrator on a form provided by the Town. The application shall include:
 - 1) All information required for a place-to-place vending permit under Section 5 (B) 1), 2), 3) and 5).
 - 2) Descriptions of any stand or structure to be used in vending.
 - 3) A copy of an approved site plan for the vending site or a submission for approval of the vending site as described in Section 7.
 - 4) Permits issued for vending in a fixed location in the rural or residential district will not exceed a period of 3 days in any given 90 day period. In other districts, 30 days is the maximum period for which a permit or license may be issued.
- C. A vending license for multiple vending sites on a single property may be issued to an individual or entity under this paragraph. Any person seeking a license for vending from multiple temporary sales location shall apply to the Administrator on a form provided by the Town. The application shall include:
 - 1) Name and home and business address of the applicant;
 - 2) Name and address of the owner of the vending business, if other than applicant;
 - 3) A description of the merchandise or services to be offered for sale;
 - 4) Name and address of the owner of the property on which the vending will occur if different from the applicant.
 - 5) The identity of individual vendors, if known at the time of application, or a description of the manner in which they will be selected (in which case a list of the individual vendors and their addresses shall be kept be the licensee and made available to the Town upon request);
 - 6) A copy of an approved site plan for the vending sites or a submission for approval of the vending sites as described in Section 7.

Section 7. Vending Site Approval.

- A. Vending activities conducted at a specific site shall be conducted only at a site which has been approved for vending through site plan approval by the Planning Board as follows:
- 1) The Planning Board shall review the site for purposes of safety, health and general welfare, including without limitation by reason of enumeration: public convenience; noise, light and glare; sanitation, litter and waste; traffic; and aesthetic concerns and site dimensions.
 - 2) The Planning Board may approve, deny or conditionally approve any application for site approval. Any permit or license for site vending shall incorporate, and be subject to, any conditions so imposed. If the Administrator denies any application he shall state his reasons in writing. Any person aggrieved by a decision of the Planning Board may appeal that decision to the Board of Selectmen, who shall review the matter in accordance with its site plan review regulations and procedures. The Board of Selectmen shall issue decision in the matter, as it deems appropriate.

Section 8. NH and FBI Criminal History Record Check Required

This Section of this ordinance is enacted pursuant to NH RSA 31:102-1 and 31: 201-b, to regulate the issuance of Vending Licenses and/or Permits of those engaged in Vending in the Town of Fitzwilliam.

- A. An applicant, employee, or volunteer seeking to engage in Vending shall submit, if required, two sets of his/her fingerprints taken by the Fitzwilliam Police Department to the Board of Selectmen, along with appropriate fees.**
- B. Upon receipt of the fingerprints and the appropriate fees, the Board of Selectmen will transmit both sets of fingerprints and fees to the State of NH State Police. The State Police will compare the subject's fingerprints against its criminal file and, (1) if no disqualifying conduct is found therein or if necessary (2) submit the fingerprints to the Federal Bureau of Investigation for a comparison with nationwide records. The results of the Federal Bureau of Investigation check will be returned to the State which will disseminate the NH State Police and national results to the Board of Selectmen.**
- C. If the employer organization is a private entity, the Board of Selectmen shall render a fitness determination based upon the results of the criminal background check and communicate its fitness determination to such private employer or organization. If an employer or organization is a public entity, the Board of Selectmen shall (1) render a fitness determination based upon the results of the criminal background check**

and communicate its fitness determination to such public entity or (2) disseminate the results of the criminal background check to the public entity for a fitness determination.

- D. In rendering a fitness determination, the Board of Selectmen will decide whether the record subject has been convicted of, or is under pending indictment for, a crime which (a) bears upon his/her ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) numerated disqualifiers.**
- E. A record subject may request and receive a copy of his/her criminal history record information from the Board of Selectmen. Should the record subject seek to amend or correct his/her record, he/she must contact the NH State Police for a New Hampshire state record or the Federal Bureau of Investigation for records from other jurisdictions maintained in its file.**

Section 9. Action on Applications.

- A. The Administrator shall normally act on an application within 7 days after receiving the completed application, including the approved site plan when required, and **a Criminal Records Check fitness determination showing no disqualifiers**. The Administrator may delay action on the application when he deems it necessary to do so, but shall advise the applicant of the reasons for the delay.
- B. The Administrator may impose such conditions as he deems necessary or appropriate upon any permit or license issued pursuant to this Ordinance, including, without limitation, restriction to particular areas, particular times, particular manners of operation, or any combination thereof, and such other conditions as may be required in the interest of public health, safety and convenience. The Administrator may require alteration in an approved site plan when necessary to protect public health or safety or to eliminate or lessen interference with public convenience. If the changes would conflict with the site plan as approved by the Planning Board, the Administrator shall notify the Planning Board of the changes and the reasons therefor. The changes required by the Administrator shall take precedence unless the Board of Selectmen otherwise orders.
- C. A license shall specify the vending activities, sites, and number of sub-vendors, which it allows. In acting upon an application for a vending license, the Administrator shall consider the following additional criteria:
 - 1) The administrative convenience to the town of dealing with a single application and license as opposed to multiple permits;
 - 2) The control of the vending activities to be exercised by the licensee;
 - 3) Policing and enforcement issues; and
 - 4) Any other factors deemed relevant.

- D. In the case of a denial, the Administrator shall indicate the basis therefor, which may include, without restriction because of enumeration:
- 1) Fraud, misrepresentation or incomplete information contained in the application;
 - 2) **A Criminal Records Check that indicates the applicant or his/her employee/s have been convicted of, or is under pending indictment for (a) a crime which bears upon his/her ability or fitness to serve in that capacity; (b) any felony or a misdemeanor which involved force or threat of force, controlled substances, or was a sex-related offense; or (c) enumerated disqualifiers.**
 - 3) Over-intense vending activities within the area or the time proposed in the application;
 - 4) Inadequate information as to the nature of the proposed business or identity of the applicant;
 - 5) The nature of the area proposed for the vending is inappropriate due to its residential character, traffic, access or other factors;
 - 6) Issues of public health and safety and inconvenience to the public, and potential adverse effects upon the town's economy and tax base; and
 - 7) Such other reasons as the Administrator may determine necessary for the public health, safety and welfare.

Section 9. Standards.

- A. No permit or license for vending shall be granted if the vending operation is proposed to be conducted within the traveled portion of any street unless the governmental entity having jurisdiction over such street shall have consented to the vending activity. Any person seeking to conduct vending within the right-of-way of a State highway shall, prior to commencing such activities, provide written authorization from an appropriate official of the State of New Hampshire authorizing such vending activities. The town reserves the right, based upon public safety, health, and welfare, to review any activity proposed within such areas, even where State authorization may have been obtained.
- B. Vending activities shall be conducted at such locations as to comply with all applicable setback requirements under the Land Use Planning Ordinance of the Town of Fitzwilliam.
- C. A minimum of two off-street parking spaces shall be provided for any vending site unless otherwise provided by a site plan approved by the Administrator after review and approval by the Selectmen.
- D. Any vending operation subject to this Ordinance shall comply with all sign requirements under the Town of Fitzwilliam Sign Ordinance. In addition, signs are allowed only at the vendor site and must be affixed to a tent or vending structure only. A single portable sign, not to exceed 12 square feet,

may be allowed with prior approval for each separate property on which vending is allowed.

- E. Licenses or site vending permits shall not be granted for vending within any residential district.
- F. Vending activities, including set-up and clean up, shall not commence before 7:00am and shall be completed no later than 10:00pm unless otherwise authorized in the permit or license.
- G. Adequate provision must be made by the licensee or permutee for waste and refuse disposal, including, if required in the permit or license, sanitary facilities.
- H. Licenses and permits issued under this ordinance are not transferable.

Section 10. Fees and Duration of Permits/Licenses.

- A. An application fee in the amount of Thirty-five dollars (\$35.00) shall be submitted with any application for a permit or license under this Ordinance. Said application fee shall not be refundable regardless of whether a permit or license is subsequently issued.
- B. If an application is approved, the applicant, prior to issuance of the permit or license shall pay the following fees based on the duration of the permit:
 - 1) For a permit which authorizes place-to-place vending or for a permit for a single vending site:
 - 1 through 30 days: \$50.00
 - 2) For a license for multiple vending sites:
 - 1 through 30 days: \$75.00
 - *In addition, the licensee shall pay a fee of \$5.00 per vending site for the period covered by the license.
 - 3) Permits issued for vending in a fixed location in the rural or residential district will not exceed a period of 3 days in any given 90 day period. In all other districts, 30 days is the maximum period for which a permit or license may be issued.
- C. The maximum period for which a permit or license may be issued is 180 days, **subject to renewal under Section 11.**
- D. The amounts of the permit or license fees specified in Section B. may be increased by the Selectmen on a uniform basis for vending activities during holiday periods or for any special events when additional vending activities may be expected and for which additional traffic, safety, police and public protection actions by the Town may be expected.

Section 11. Renewal.

Renewal of a permit or license shall be subject to the same application procedure as is specified for an initial permit unless the Administrator, in issuing the permit, authorizes renewal on other conditions. An applicant for renewal shall not be required to pay a new application fee if the application for renewal is made within 60 days after expiration of the previous permit unless there has been a substantial change in the nature of the application as determined by the Administrator.

Permit and license fees shall be paid as specified in Section 10.

Section 12. Exceptions and Waivers.

- A. Exceptions. Charitable and religious solicitations not involving commercial transactions and for limited time periods shall be exempt from this Ordinance, provided advance notice of such solicitations is given to the Administrator. The Selectmen may allow such groups to engage in limited commercial transactions for gain related to their purposes for such time and at such locations as the Selectmen shall determine.
- B. Charitable Events. Permits shall be required for yard sales, auctions and fund-raising events by not-for-profit organizations and charitable groups if the activity involves multiple vendors. Such events officially conducted or sponsored by the Town of School District are exempt from this Ordinance.
- C. Individual Yard Sales. Individuals holding bona fide yard sales on their own property, located in a residential district, not more than 3 days at any time and not more than 12 days in any 12-month period are exempt from permitting under this Ordinance.
- D. Entertainment Events. A permit or license shall not be required for vending activities held in conjunction with a bona fide entertainment event in accordance with all of the following:
 - 1. The vending activity must be conducted on the same property as the entertainment event and the property must have been approved under Section 7, unless approval is waived by the Selectmen;
 - 2. The vending must be subordinate and incidental to the entertainment event which must be the primary event conducted;
 - 3. The vending and entertainment site must be within a confined area.
- E. Waivers. For good cause shown, the Selectmen may waive license or permit requirements, fees, or any other provisions of this ordinance.

Section 13. Enforcement/Appeals.

- A. A permit or license may be summarily suspending by the Administrator if its terms or conditions or this ordinance are violated. The permittee or licensee may request a hearing before the Selectmen to review any summary suspension.
- B. After hearing, unless a hearing is waived by the permittee or licensee, the Selectmen may revoke any permit or license for violation of its terms or conditions or for any violation of this ordinance or other Town regulations or Ordinances.
- C. If the Administrator denies a permit or license under this ordinance, the applicant may request the Selectmen to review the denial by application in writing which shall state the grounds for appeal. The Selectmen shall review the matter and take such action as they deem necessary and shall provide opportunity for hearings if requested. The Selectmen may affirm, modify or reverse the decision of the Administrator and shall state their reasons for any variation of that decision.

Section 14. Non-Compliance.

Whoever violates the provisions of this Ordinance shall be punished by a fine not to exceed \$100.00 on conviction of his first offense hereof; and on each subsequent conviction, such person shall be punished by a fine of not less or more than \$100.00 or such other penalty as may be authorized by law. Each day a violation exists shall constitute a separate offense.

Section 15. Effective Date.

This ordinance shall take effect on April 28, 1999.

Thomas F. Parker, Chairman

Michael A. Methe

Katherine H. Metzger

BOARD OF SELECTMEN