

Introduced: 08/20/01
Second Read:00/00/00
Adopted: 00/00/00

Ordinance 2001-06
AN ORDINANCE
RELATING TO ITINERANT VENDORS, HAWKERS
AND PEDDLARS

WHEREAS the Charter of the Town of Londonderry was formally adopted at the Annual Town Meeting held on March 12, 1996; and

WHEREAS said Charter became effective as of July 1, 1996; and

WHEREAS Section 3.10 of said Charter provides that it shall be the duty of the Town Council to prepare or revise a codification of the Ordinances of the Town which are appropriate for continuation as local laws of the Town; and,

NOW THEREFORE BE IT ORDAINED by the Town Council of the Town of Londonderry that Ordinance 2001-06 establishing Chapter XI - Itinerant Vendors Hawkers and Peddlars code as hereafter set forth is adopted

Mark G. Oswald
Chairman - Londonderry Town Council

A TRUE COPY ATTEST:
00/00/00

Marguerite Seymour
Town Clerk

CHAPTER XI - ITINERANT VENDORS, HAWKERS AND PEDDLERS

SECTION I - AUTHORITY

The enabling legislation is RSA 31:102-A - "Hawkers, Peddlers and Vendors. The governing board of a city, town or village district may adopt, by ordinance or regulations, provisions on the licensure and regulation of itinerant vendors, hawkers, peddlers, traders, farmers, merchants, or other persons who sell, offer to sell, or take orders for merchandise from temporary or transient sales locations within a town or who go from town to town or place to place within a town for such purposes. A city, town or village district shall be specifically prohibited, however from licensing or regulating a candidate for public office in the process of obtaining signatures on nomination papers, who seeks to have his name placed on the ballot for the state general election by submitting nomination papers under RSA 655:40. Provisions adopted under this section shall be in addition to any requirements imposed by the state under either RSA 320 or RSA 321 and may include, but shall not be limited to:

- A. Classification of licensees consistent with constitutional requirements of equal protection;
- B. Imposition of reasonable requirements, including fees, for the issuance of a license;
- C. Restrictions as to the areas of municipality open to licensees and the hours and days of their operation; and
- D. Other reasonable conditions and terms deemed necessary for public convenience and safety as the governing board determines."

SECTION II - FINDINGS

- 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.

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SECTION III - DEFINITIONS

- A.** “Administator” means the Police Chief or other individual so designated by the Council to act upon applications and otherwise administer this Ordinance.
- B.** “Council” means the Londonderry Town Council.
- C.** For the purposes of this chapter, the words “itinerant vendors” mean all persons (as defined by RSA 358-A:1), both principals and agents, including those persons whose principal place of business is not in this state, who engage in a temporary or transient business in this state, either in one locality or traveling from place to place, selling goods, wares and merchandise, with a total value greater than \$500.00 from stock or by sample for future delivery, and who, for the purpose of carrying on such business, hire, or occupy a temporary place of business.
- D.** A “temporary place of business” means any public or quasi-public place including, but not limited to, a hotel, motel, rooming house, storeroom, building, part of a building, tent, parking lot, vacant lot, railroad car or trailer temporarily occupied for the purpose of making retail sales of goods to the public.
- E.** “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. This ordinance does not apply to farm stands as defined in RSA 21:34-a.
- F.** “Vendor License” means authorization to conduct vending activities from multiple temporary sales locations on a single property issued under Section VIII.
- G.** “Vendor Permit” means a permit issued for a single temporary vending location under Section VII or for vending while going from place-to-place under Section VI.
- H.** “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.
- I.** “Sub-vendor” means one who is operating under a vendor license held by a vendor.
- J.** A “yard sale” or “flea market”, for purposes of this ordinance shall be deemed to be the sale of used items offered to the public in an indoor or outdoor display on property normally used for purposes other than such sales, such as residences, vacant lots, commercial properties or other similar areas. Included are activities generally referred to as “barn sales”, “garage sales” or other similar activities.

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SECTION IV - PURPOSE:

- A.** The purpose of this Ordinance is to protect the safety, health, and welfare of the general public and not to protect the personal or property interests of any individual.
- B.** Nothing in this Ordinance shall be deemed to be the making of a promise, or the undertaking of a special duty with any person; nor shall the provision of, or failure to provide such licenses or to undertake particular inspections or types of inspections be deemed to create a special relationship or duty towards any person upon which an action in negligence or any other tort might be founded.

SECTION V - 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 Town Council, Police Chief, Health Officer or other Town officials;
- 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 VI - PLACE-TO-PLACE VENDING

- 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.

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SECTION VI - PLACE-TO-PLACE VENDING (Cont'd)

- 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 VII - VENDING FROM TEMPORARY LOCATIONS

- 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 Section VIII Paragraph (A). 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 IX.
- 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 VI, subsections 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 (if located in a vacant commercial parcel) or a submission for approval of the vending site as described in Section IX.
 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.

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SECTION VIII - VENDING FROM MULTIPLE VENDING SITES

- A.** 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 by 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 IX.

SECTION IX - VENDING SITE APPROVAL

- A.** Vending activities conducted at a vacant commercial 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 Town Council, who shall review the matter in accordance with its site plan review regulations and procedures. The Town Council shall issue decision in the matter, as it deems appropriate.

SECTION X - 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. 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.

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SECTION X - ACTION ON APPLICATIONS (Cont'd)

- 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 Town Council 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. Over-intense vending activities within the area or the time proposed in the application;
 3. Inadequate information as to the nature of the proposed business or identity of the applicant;
 4. The nature of the area proposed for the vending is inappropriate due to its residential character, traffic, access or other factors;
 5. Issues of public health and safety and inconvenience to the public, and potential adverse effects upon the town's economy and tax base; and
 6. Such other reasons as the Administrator may determine necessary for the public health, safety and welfare.

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SECTION XI - 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 Londonderry
- 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 Town Council.
- D.** Any vending operation subject to this Ordinance shall comply with all sign requirements under the Town of Londonderry 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 permute 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.

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SECTION XII - 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 12.
- D.** The amounts of the permit or license fees specified in Section B may be increased by the Town Council 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 XIII - 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 XIV - EXCEPTIONS AND WAIVERS.

- A.** **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 Town Council 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 Town Council shall determine.

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SECTION XIV - EXCEPTIONS AND WAIVERS. (Cont'd)

B. Charitable Events.

1. Rummage sales and similar fund raising efforts conducted by non profit corporations registered with the NH Secretary of State, or other organizations:
2. Organizations generally considered in this context are churches, church-related organization, local and national service clubs and recognized service oriented organizations.
3. Such events officially conducted or sponsored by the Town or School District are exempt from this Ordinance.
4. The conditions of the Permit Section below shall apply

C. Yard Sales

1. Individuals holding bona fide yard sales on their own property are exempt from permitting under this Ordinance.
2. In full recognition of the standards imposed by the Zoning Ordinance of the Town of Londonderry, certain casual uses of property within the Residential, AR-1 and R-11 districts which are not compatible with the overall intent as it applies to the conduct of business within those districts, the Town shall therefore allow:
 - a. Casual sales of household and personal items of the resident/owner at his/her place of domicile in said districts, providing any such sale is limited for a total period of twelve (12) hours on two (2) successive days during any one (1) week annually and limited to (2) similar casual sales in a period of twelve (12) months from the date of the first sale.
3. Casual sales of automobiles, trailers, boats and similar items of personal property:
 - a. Such personal property must be personally owned by the resident owner or be of immediate family ownership, as evidenced by a title or registration
 - b. A continuous offer for sale of different such items shall be inconsistent with the intent of casual sale and will not be permitted
 - c. Agents, dealers, brokers and salesmen are specifically excluded from carrying out casual sales in their business capacity under these regulations
 - d. Only one (1) unregistered vehicle may be on the premises and offered for such casual sale at one time. (Laws related to unregistered vehicles, junk yards, licensed dealers, etc., shall apply to all instances.)

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SECTION XIV - EXCEPTIONS AND WAIVERS. (Cont'd)

C. Yard Sales (Cont'd)

4. Signs

- a. No sign advertising any yard sale, flea market or other similar activity as controlled by this ordinance shall be posted more than twelve hours prior to the commencement of the sale and all signs shall be removed no more than two hours after its termination.
- b. Signs for display to advertise the specific sale are limited to two (2) single faced or one (1) two-faced sign and shall be of reasonable size and in good taste. The size and locations of signs are to be part of the application and must be acceptable to the Building Inspector.
- c. No signs shall be posted on any property, including utility poles, without the permission of the owner thereof and shall be in compliance with the Londonderry Zoning Ordinance.
- d. It shall be the responsibility of the person or persons operating the yard sale, flea market or other similar activity to comply with this provision.

5. Notification to Police Department

- a. Any person wishing to operate a yard sale, flea market or other similar activity within the Town of Londonderry shall notify the Londonderry Police Department no less than twenty four (24) hours prior to the commencement of the sale of the location and proposed time and dates of the sale.
- b. Any person operating such a sale and any person attending same shall comply with all requests and requirements of either the Town of Londonderry Police Department or its individual officers with regard to the flow of traffic and parking of vehicles in connection with such sale.

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 VIII, unless approval is waived by the Town Council;
2. The vending must be subordinate and incidental to the entertainment event which must be the primary event conducted;

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SECTION XIV - EXCEPTIONS AND WAIVERS. (Cont'd)

D. Entertainment Events. (Cont'd)

3. The vending and entertainment site must be within a confined area.

E. Waivers. For good cause shown, the Town Council may waive license or permit requirements, fees, or any other provisions of this ordinance.

SECTION XV - 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 Town Council to review any summary suspension.

B. After hearing, unless a hearing is waived by the permittee or licensee, the Town Council 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 Town Council to review the denial by application in writing which shall state the grounds for appeal. The Town Council shall review the matter and take such action as they deem necessary and shall provide opportunity for hearings if requested. The Town Council may affirm, modify or reverse the decision of the Administrator and shall state their reasons for any variation of that decision.

D. Functions not herein defined, organizations not detailed and conditions or stipulations felt excessive may be appealed to the Town Council

SECTION XVI VIOLATION

A. Any resident/owner who violates the provisions of this ordinance shall be guilty of violation and subject to a fine not exceeding One Hundred (\$100) dollars.

B. Every day that a violation continues after the resident/owner has received notice of the existence of the condition that constitutes a violation of this ordinance shall be deemed a separate offense.

~~End of Section~~