TOWN OF NAPLES

STREET VENDORS AND OCCUPANCY OF STREETS AND PUBLIC LAND

ADOPTED: JUNE 5, 2013
Amended: June 4, 2014

Attested: _____
Judy Whynot, Town Clerk

THE TOWN OF
NAPLES ORDINANCE REGULATING STREET VENDORS AND OCCUPANCY OF STREETS AND PUBLIC LANDS

Town of Naples Ordinance Regulating Street Vendors and Occupancy of Streets and Public Lands

ARTICLE I
GENERAL

Section 1.1 TITLE

This Ordinance shall be known and may be cited as the Town of Naples Ordinance Regulating Street Vendors and Occupancy of Streets and Public Lands.

Section 1.2 AUTHORITY

This Ordinance is enacted pursuant to the home rule powers conferred by Article VIII, part Second of the Maine Constitution, and Title 30-A, Sections 2101, 2109, and 3001 to 3014 of the Maine Revised Statues Annotated; and also pursuant to the authority granted by the State of Maine, Department of Transportation in an agreement dated September 10, 2010, and October 4, 2010, with Section F granting the Town of Naples the right and responsibility to use and regulate all public areas located outside the curb of State Project Identification Number 0011060.00.

Section 1.3 PURPOSE

The purpose of this Ordinance is to regulate street vending and other activities on property owned or under the control of the Town of Naples and street vending on private property in order to create a vibrant, attractive and diverse use of the Town's commercial areas and green spaces.

Section 1.4 DEFINITIONS

The definitions used in this section are specific to this Ordinance. The other words used in this Ordinance shall have the meaning provided by the Town of Naples Definitional Ordinance or Webster's Dictionary, unless the context clearly dictates another meaning or interpretation.

Artist means a person creating works of art, or selling, offering to sell, or displaying for sale, works of art created by the artist who is offering it for sale.

Ice cream truck means a motorized vehicle utilized for the sale of ice cream, gelato, Italian ice or frozen yogurt products or novelties.

Kiosk means a small, light structure with one or more open sides.

Mobile food service establishment means an establishment that stores, prepares, serves, or sells food for human consumption and is capable of movement on a daily basis, having all facilities contained within the unit and is not fixed to a location for operation or transaction of business.

Performance Artist means a person engaged in performance activity on public property for the purpose of providing public entertainment and self-expression, such as playing a musical instrument, dancing, singing, pantomime, juggling or magic.

Street vendor means a person, excluding artists and performance artists, who is engaged in selling or offering to sell goods, services, food or beverages, out of doors on public or private property. The following activities are exempted from the definition of Street Vendor:

- Display of merchandise for sale on private property outside of a principal or accessory fixed building utilized for the sale of such merchandise;
- Yard sale on residential property;
- Sale of household items on residential property; and
- Produce stand on residential property

Street, except where the language is more specific, means any public street, sidewalk, alley, path, park, playground or other Town-owned or Town-controlled property, or any portion thereof, which is open for use by the public as a matter of right or privilege.

Works of Art means materials or objects with expressive content such as paintings, prints, photography or sculpture.

Section 1.5 INSURANCE & INDEMNIFICATION REQUIRED

A. Insurance.
All persons who receive a license from the Town pursuant to this Ordinance shall be required, to the Town's satisfaction, to maintain in full force and effect at all times, a policy of comprehensive public liability insurance with limits of no less than $400,000 for bodily injury, death and property damage, naming the Town of Naples as additional insured. A certificate of insurance must be provided before a street vendor's license is issued.

B. Indemnification.
All persons who receive a license from the Town pursuant to this Ordinance shall be required to defend, indemnify and hold the Town harmless from any claims resulting from licensed activities.

ARTICLE II
STREET VENDORS AND ARTISTS

Section 2.1 LICENSES

A. Street vendor's license required.
(1) With the exception of the activities described in Section 2.1.B, all street vendors are required to have a license from the Town.
(2) Street vendor's licenses shall be issued for a period of one year.

B. License not required for certain activities.

No street vendor's license shall be required for:

(1) Conducting business on Town-owned property pursuant to a lease, contract, or other agreement with the Town;
(2) Operating a licensed farmer's market stall;
(3) Activities conducted by Municipal departments.

(4) The sale of goods, services, food or beverages within the boundaries of a Town-approved street festival, sidewalk sale, or other special event with the permission of the event organizer

C. Compliance with regulations.

Street vendors exempted from the license requirement must still comply with all federal, state and local laws and ordinances and with any time, place and manner restrictions applicable to licensed street vendors such as, for example, hours of operation. Any license issued under this Ordinance shall contain such terms, conditions and restrictions as the Municipal Officers shall require. Said licenses may be subject to such terms and conditions as the Municipal Officers or their designee deem advisable, including restrictions on the time, place and manner of operation.

D. Revocation.

Licenses authorized under this Ordinance may be revoked at any time for cause by the Municipal Officers or their designee upon actual notice to the holder and an opportunity to be heard.

E. Abandoned License.

Street vendors operating on public or private property pursuant to an annual license shall be deemed to have abandoned the license upon an absence from the designated location for a period of two consecutive weeks. Upon such abandonment, the Town may revoke the license and, if on public property, may assign the designated vendor location to another qualified applicant.

Section 2.2 STREET VENDORS ON PUBLIC PROPERTY

The following provisions shall apply to street vendors operating on property owned or controlled by the Town.

A. Location.

(1) The Town may establish designated street vendor locations on public property for assignment to qualifying applicants through the issuance of annual licenses.
(2) There may be a limited number of street vendor locations established by the Town.
(3) In the event that the Town receives more qualified applicants than available street vendor locations, the Town shall create a waiting list for said qualified applicants and administer the waiting list in a manner that is in the best interest of the Town.

B. Operation.

(1) Street vendors shall operate in compliance with this Ordinance, with any rules or regulations adopted by the Municipal Officers, and with any license conditions.
(2) Street vendors shall operate only from a designated vendor location established by the Town, pursuant to an annual license approved by the Municipal Officers.
(3) Street vendors shall operate only from a kiosk that is approved by the Town and shall display at all times a numbered license issued by the Clerk's office.
(4) No license issued under the provisions of this Ordinance shall be used at any time by any person other than to whom it was issued.
(5) Unless otherwise authorized by the Town, the kiosk shall be removed at the end of each day and the space shall be cleaned of all debris.

(6) The kiosk shall be removed when necessary for Town maintenance of public property, including but not limited to mowing, watering and maintaining grass and vegetation. Kiosks may be temporarily relocated to alternate open space during such maintenance periods.

C. Sale of goods.

Street vendors who sell or offer to sell goods or services are prohibited from using any equipment or selling or offering to sell any goods or services not specifically authorized by the license and shall not operate in any manner that would constitute an unfair or deceptive trade practice under state law.

D. Sale of food or beverages.

(1) The sale of food or beverages by street vendors shall only be permitted from a fully licensed mobile food service establishment.
(2) Street vendors shall provide approved waste paper receptacles for use by customers, shall maintain the immediate area free of litter generated by customers, and shall arrange for proper disposal of waste.
(3) The sale of food or beverages from food trucks is prohibited.

E. Street festivals, sidewalk sales and special events.

(1) Street vendors licensed for operation on public property may operate in their designated vendor locations within and during street festivals, sidewalk sales or other special events.
(2) Street vendors operating within the boundaries of a Town-approved street festival, sidewalk sale or other special event, with permission of the event organizer, are not required to obtain a street vendor's license.

F. Ice Cream Trucks.

(1) No ice cream truck shall stop at any time for the purpose of making sales on or along that portion of Route 302 between Goodridge Drive and Lake House Road, commonly known as the Causeway.
(2) No ice cream truck shall stop at any time for the purpose of making sales if such stop is located within five hundred (500) feet of a licensed fixed or mobile food service establishment.
(3) No ice cream truck shall stop for the purpose of making sales if such stop prevents the safe passage of other motor vehicles on the public street.

Section 2.3 STREET VENDORS ON PRIVATE PROPERTY

The following provisions shall apply to street vendors operating on private property.

A. Location.

Street vendors shall only operate in the Commercial and Village Districts.

B. Operation.

(1) Street vendors shall operate in compliance with this Ordinance, with any rules or regulations adopted by the Municipal Officers, and with any license conditions.
(2) Street vendors shall only operate pursuant to an annual license approved by the Municipal Officers.

(3) Street vendors shall display at all times a numbered license issued by the Clerk's office.
(4) No license issued under the provisions of this Ordinance shall be used at any time by any person other than to whom it was issued.

C. Sales and display area.

(1) Street vendors shall operate in an area located entirely on private property and no more than one hundred (100) square feet, with a display area not exceeding fourteen feet (14') in height.
(2) Individual street vendors shall be separated by no less than twenty-five feet (25').
(3) Unless otherwise authorized by the Town, merchandise shall be removed at the end of each day and the sales area cleaned on a daily basis.
(4) The owner of the property shall provide toilet facilities to the vendor.

D. Sale of goods.

Street vendors who sell or offer to sell goods or services are prohibited from using any equipment or selling or offering to sell any goods or services not specifically authorized by the license and shall not operate in any manner that would constitute an unfair or deceptive trade practice under state law.

E. Sale of food or beverages.

(1) The sale of food or beverages by street vendors shall only be permitted from a fully licensed mobile food service establishment.
(2) Street vendors shall provide waste paper receptacles for use by customers, shall maintain the immediate area free of litter generated by customers, and shall arrange for proper disposal of waste.
(3) The sale of food or beverages from food trucks is prohibited.

Section 2.4 ARTISTS

Artists and performance artists shall operate in compliance with this Ordinance and with any rules or regulations adopted by the Municipal Officers.

A. Display.

Artists and performance artists shall not create, perform, sell or display art:

(1) Within any area designated by the Municipal Officers for a sidewalk sale, street festival, farmers' market, or other special event, except as authorized by the Municipal Officers;

(2) On any sidewalk or in any other location so as to impede the free passage of vehicles or pedestrians, obstruct the entrance to or exit from private property, jeopardize public safety, or otherwise inconvenience the public;

(3) On a public street or on public benches, monuments or structures; or

(4) In a manner that uses private property to display artwork without the permission of the property owner.

ction 2.5 PROHIBITED OPERATIONS

A. Location of operations.
No street vendor shall operate:

(1) On public property, outside designated vendor locations establish by the Town, except during festivals or other special events approved by the Municipal Officers;

(2) Within fifty feet (50') of any fixed-base retail establishment offering the same or substantially similar goods or services, except during festivals or other special events approved by the Municipal Officers; or

(3) On any sidewalk or in any other location so as to impede the free passage of vehicles or pedestrians, obstruct the entrance to or exit from private property, jeopardize public safety, or otherwise inconvenience the public.

B. Licensed persons.
No license issued under the provisions of this Ordinance shall be used at any time by any person other than to whom it was issued.

C. Hours of operation.
No street vendor shall operate between the hours of 12:00 a.m. and 8:00 a.m. No artist shall display or sell works of art on public property between the hours of 12:00 a.m. and 8:00 a.m. No performance artist shall perform on public property between the hours of 12:00 a.m. and 8:00 a.m.

D. Generators.
The use of generators by street vendors shall be prohibited.

Section 2.6 APPLICATION

A. Contents of application.
Applicants for a street vendor's license under this Ordinance must file with the Municipal Officers a sworn application in writing on a form to be furnished by the Town Clerk, which shall supply, at a minimum, the following information:

(1) Name and business description of the applicant.
(2) Address (legal and local).
(3) A brief description of the nature of goods, services, food or beverages to be sold.
(4) The length of time for which the license is desired.
(5) If a vehicle is to be used, a description of the same, with proof of current registration and insurance.
(6) A current photo ID.
(7) Proof of current Maine resale certificate, where applicable.
(8) If on private property, the name of the property owner, location, and written permission from the property owner.
(9) If on private property, a description of the sales area location and dimensions.
(10) A description and design of any kiosk and its dimensions.
(11) Proof of required state and local licenses and approvals for mobile food service establishments.

B. When filed.
The application shall be filed with the Municipal Officers not less than 60 days nor more than 120 days before the date on which it is proposed to commence street vending operations.

C. Application fee.
(1) At the time of filing the application, an application fee in the amount of $100 shall be paid to the Town Clerk:
(2) +Non-profit organizations are exempt from the application fee.
(3) The Municipal Officers may waive application fees in their sole discretion.

D. License Fee.
(1) Within seven (7) days of approval of an application by the Municipal Officers, the following license fees shall be paid to the Town Clerk:
a. $2,000 per year, or any portion thereof, for use of designated vendor locations on public property.
b. $500 per year, or any portion thereof, for street vendors on private property.
(2) Non-profit organizations are exempt from the license fee.
(3) The Municipal Officers may waive license fees in their sole discretion.
a. Applicants seeking a fee waiver shall submit a waiver request to the Municipal Officers for their consideration.
b. In determining whether to grant a fee waiver request, the Municipal Officers shall consider whether the fee is disproportionate to the type of use proposed for the space.

E. One license per applicant.
Street vendors licenses shall be limited to one per applicant.

Section 2.7 LICENSE AND APPEAL PROCEDURES

A. Public hearing.
The Municipal Officers shall, prior to granting a license and after reasonable notice to the municipality and the applicant, hold a public hearing at which the testimony of the applicant and that of any interested members of the public shall be taken.

B. Notification of denial or approval.
Any applicant requesting a street vendor's license from the Municipal Officers shall be notified in writing of the Municipal Officers' decision no later than fifteen (15) days after the decision. In the event a license is denied or approved with conditions, the applicant shall be provided with the reasons for denial or conditions in writing. The applicant may not reapply for a license within thirty (30) days after an application for a license that has been denied.

ARTICLE III
OCCUPANCY OF PUBLICLY OWNED OR CONTROLLED LANDS

Section 3.1 PUBLIC PROPERTY OCCUPANCY LICENSE.

A. Authorization required for occupancy of streets.

(1) No person shall place or cause to be placed in or on, or shall suspend over, any street in the Town any article or thing whatsoever, including but not limited to buildings, structures, tables or merchandise except as duly authorized by the Municipal Officers. The Town is in no way required or obligated to grant such authorization, and any authorization will take into consideration its effects on public health, safety, welfare and aesthetics of the Town. Authorizations are nontransferable and not assignable. All Federal, State or local permits or licenses must be in place and in good standing at all times of operations.

(2) The Municipal Officers or their designee are hereby authorized to issue revocable licenses for the location, protection, maintenance and use of articles, structures, trees, and other installations placed in, on, above, or beneath streets or other public property, upon receipt of proof of insurance in a form and in an amount satisfactory to the town.

(3) This section shall not apply to a table or other structures used by:

- Artists to create or sell works of art;
- Persons engaged in an activity protected by the First Amendment to the United States and Maine Constitutions, including but not limited to the distribution of political or religious literature or the gathering of signatures on petitions.

(4) Business owners may not place benches or flower pots on Town sidewalks or in public spaces without obtaining authorization from the Municipal Officers.

B. Outdoor dining license required.

(1) No person shall expand a food service establishment to the outside on any street, way or public place in the Town except under a duly authorized outdoor dining license issued by the Municipal Officers.

(2) The Municipal Officers or their designee is hereby authorized to issue revocable licenses for outdoor dining in Town parks or other Town owned or controlled spaces.

(3) The Municipal Officers are further authorized to promulgate such other regulations as may be required for outdoor dining on streets, ways or other public places.

Section 3.2 FESTIVALS AND SPECIAL EVENTS

A. Nonprofit and for profit sponsors of special events.

Organizations (private, nonprofit, or for profit) wishing to use public property for festivals or other special events shall apply to the Town for a permit pursuant to the Town of Naples Outdoor Entertainment Ordinance. As part of the application process, the applicant shall describe the intended properties that will be used as part of the event as well as any vendors that may participate during the event.

B. Festival area designated; permission from festival organizer required.

The Municipal Officers may designate an area for a street festival or other special event. Street vendors, other than those operating pursuant to an annual license for a designated vendor location, must obtain the permission of the festival organizer to conduct business

within the festival area. Said street vendors operating within the festival boundaries shall not be required to obtain a street vendor's license.

Section 3.3 FARMERS' MARKET

A. Farmers' Market Stalls.
Persons wishing to operate a stall during a Town Farmers' Market shall apply to the Town for authorization.

B. Farmers' Market Rules.
The Municipal Officers are hereby authorized to promulgate from time to time such reasonable rules and regulations governing the Town Farmers' Markets.

Section 3.4 PROHIBITIONS

A. Vehicle restrictions.
No vehicle engaged in the conveyance of passengers over regular routes shall be operated on any roadways within public parks except those that may be designated for such purposes by the parks authority.

B. Vandalism prohibited.
No person shall in any manner cut, mar, deface, injure or destroy any growth, buildings, fences or other structures in or upon streets or public property.

C. Littering prohibited.
No person shall deposit or leave refuse of any kind in or upon any of the parks or public grounds except in containers specifically provided for such refuse.

D. Skating, skateboarding or bicycling.
Skating, skateboarding or bicycling shall not be allowed on any portion of the areas known as the Boardwalk or sidewalks in areas designated as the Causeway.

Section 3.5 FEES FOR STREET OCCUPANCY

A. Fees for licenses issued under this Article.

(1) Objects including but not limited to tables, chairs, barricades, bollards, planters and benches:

- Twenty dollars ($20.00) per item, per year or any portion thereof

(2) Use of Town owned or controlled property (including but not limited to festivals, events, promotions, demonstrations, parades, marches, road races, walkathons, fundraisers, press, conferences, rallies, protests, sampling, poll taking, banners and public displays):

- fee as provided by annual order of the Town Municipal Officers

(3) Fees for the issuance of a revocable outdoor dining license and for the use of public property to sell merchandise or display merchandise for sale.

a. Application fee of one hundred dollars ($100) to be submitted with the application.
b. License fee of two thousand dollars ($2,000.00) to be submitted within seven (7) days of approval of the application by the Municipal Officers. This fee shall be paid one time by all property owners occupying public property for private use on the effective date of this ordinance, and property owners that occupy new areas of public property for private use. The license fee shall be accompanied by a plan depicting the area of public property to be occupied which must be submitted to the Board of Selectmen for approval. Upon the sale or lease of the property, the new owner or lessee shall pay the license fee if the new property owner or lessee continues to occupy public property,
c. Annual license fee of four dollars ($4.00) per square foot of public land area.

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B. Waiver.

(1) The Municipal Officers may waive license fees in their sole discretion .
(2) Applicants seeking a fee waiver shall submit a waiver request to the Municipal Officers for their consideration.
(3) In determining whether to grant a fee waiver request, the Municipal Officers shall consider:
a. Whether the fixed business seeking the waiver was in existence prior to the enactment of this ordinance.
b. Whether the fixed business seeking the waiver has a sufficient amount of private property on which to locate outdoor dining or display merchandise for sale.
c. Whether the tables, chairs, benches or other items requiring an occupancy permit for location on public property are providing a public improvement or convenience.

ARTICLE IV
ENFORCEMENT, APPEALS AND PENALTIES

Section 4.1 ENFORCEMENT AND PENALTIES

A. Authorization of Code Enforcement Officer and Town Manager.
The Code Enforcement Officer and Town Manager or his or her designee is authorized to enforce this Ordinance.

B. Violation notification.
If the Code Enforcement Officer finds that any provision of this Ordinance is being violated, the Code Enforcement Officer shall provide notification in writing to the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it.

B. Commencement of enforcement action.

The Code Enforcement Officer may commence an enforcement action requesting, among other things, correction of the violation, civil penalties, attorney's fees and costs; such enforcement action may see injunctive relief.

Section 4.2 PENALTIES

Violation of any provision of this Ordinance or any lawful order relating to this Ordinance by the Code Enforcement Officer shall be subject to a fine of not less than $100.00 nor more than $2,500.00 per offense. Each day that the violation continues is a separate violation. In the event that the Town incurs any expense in the enforcement of this Ordinance, including but not limited to court costs and attorney's fees, the Town shall be entitled to collect such costs from the violator. Any penalties or costs assessed shall be payable to the Town of Naples.

Section 4.3 APPEALS

A. Appeal to Municipal Officers.

Whenever a person shall deem themselves aggrieved by an order made by the Code Enforcement Officer or Town Manager or designee, the person may file an appeal to the Municipal Officers within ten (10) days of the date of the order, and the person shall be afforded a hearing on the matter before the Municipal Officers. Unless by their authority the order is revoked or amended, such order shall remain in force and be forthwith complied with by the person in its original form or as amended.

B. Revocation or amendment.

In cases of applicability or interpretation of the rules or regulations, the Municipal Officers may revoke or amend such order made by the Code Enforcement Officer or Town Manager or designee.

C. Extensions or exceptions.

In cases where compliance with such order made by the Code Enforcement Officer or Town Manager or designee would cause a disproportionate burden on the appellant, the Municipal Officers may extend the time limit or grant exceptions to the order, or waive requirements of this Ordinance or any applicable rules or regulations, provided that the Municipal Officers shall give due consideration to the purposes of the rules or regulations in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.

ARTICLE V
SEVERABILITY, INCONSISTENCY AND EFFECTIVE DATE

Section 5.1 SEVERABILITY

The invalidity of any provision of this Ordinance shall not invalidate any other provision.

Section 5.2 INCONSISTENCY

If provisions of this Ordinance conflict or are inconsistent with other provisions of this Ordinance, with the provisions of other ordinances of Town of Naples, or with laws, ordinances, rules or regulations of the federal government or the State of Maine, the stricter requirements shall apply and control.

Section 5.3 REPEAL OF STREET VENDOR ORDINANCE

As of the effective date below, the Town of Naples Street Vendor Ordinance adopted June 16, 2010 is hereby repealed by the enactment of this Ordinance.

Section 5.3 EFFECTIVE DATE

The effective date of this Ordinance shall be when enacted by the Town of Naples.

Enacted on June 4, 2014.