

**Town of Naples Ordinance Regulating
Mobile Vendors
Adopted: June 5, 2013
Amended: June 4, 2014
Amended February 20, 2020**

**ARTICLE I
GENERAL**

Section 1.1 TITLE

This Ordinance shall be known and may be cited as the Town of Naples Ordinance Regulating Mobile 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 Statutes 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 mobile vending and other activities on property owned or under the control of the Town of Naples and mobile 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. Food trucks are considered a mobile food service establishment.

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.

Mobile 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 as allowed in this Ordinance.

Special event: means an event outside of the host property's normal business or activity and is being held as a celebration, a promotion and/or marketing. Special events may be on public or private 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 mobile 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
MOBILE VENDORS AND ARTISTS

Section 2.1 LICENSES

A. Mobile vendor's license required.

- (1) With the exception of the activities described in Section 2.1.B, all mobile vendors are required to have a license from the Town.
- (2) Mobile vendor's licenses shall be issued for a period of one year.
- (3) Temporary mobile vendor's licenses for participation in sidewalk sales, street festivals or other special events may be issued for a period of no less than one (1) day and no more than five (5) days.
- (4) No temporary mobile vendor's licenses shall be issued for vendors on private property.

B. License not required for certain activities.

No mobile 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) Events on private residential or commercial lots where mobile vendors are the caterer for a private gathering and where the host of the event is responsible for all expenses and where tickets are not sold to attend the event.

C. Compliance with regulations.

Mobile 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 mobile 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.

Section 2.2 MOBILE VENDORS ON PUBLIC PROPERTY DURING STREET FESTIVALS, SIDEWALK SALES AND OTHER SPECIAL EVENTS

The following provisions shall apply to mobile vendors operating on property owned or controlled by the Town during street festivals, sidewalk sales and other special events approved by the Town

A. Street festivals, sidewalk sales and special events.

- (1) Mobile vendors licensed for operation on public property may operate in designated vendor locations within and during street festivals, sidewalk sales or other special events.
- (2) The Town may issue temporary mobile vendor licenses for operation within street festivals, sidewalk sales or other special events, provided that the applicant meets all of the requirements set forth in this Ordinance and that the organizer of the street festival, sidewalk sale or other special event has approved the street vendor's participation in the event.

B. Location.

- (1) For street festivals, sidewalk sales and other special events, the Town may establish designated mobile vendor locations on public property for assignment to qualifying applicants through the issuance of temporary licenses.
- (2) There may be a limited number of mobile vendor locations established by the Town.
- (3) In the event that the Town receives more qualified applicants than available mobile 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.

C. Operation.

- (1) Mobile vendors shall operate in compliance with this Ordinance, with any rules or regulations adopted by the Municipal Officers, and with any license conditions.
- (2) Mobile vendors shall operate only from a designated vendor location established by the Town, pursuant to a temporary license approved by the Municipal Officers.
- (3) Mobile vendors shall operate only from a location 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 mobile vendor shall be removed at the end of each event and the space shall be cleaned of all debris by the mobile vendor.

D. Sale of goods.

Mobile 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 mobile vendors shall only be permitted from a fully licensed mobile food service establishment.
- (2) Mobile 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 and beverages by mobile vendors shall only be permitted from a fully licensed mobile food service establishment

Section 2.3 MOBILE VENDORS ON PRIVATE PROPERTY

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

A. Location.

- (1) Mobile vendors, offering their products to the general public, shall only operate in the Commercial District.
- (2) Mobile vendors, offering their products to the general public, shall be allowed in any District during a special event.

B. Operation.

- (1) Mobile vendors shall operate in compliance with this Ordinance, with any rules or regulations adopted by the Municipal Officers, and with any license conditions.
- (2) Mobile vendors shall only operate pursuant to an annual license approved by the Municipal Officers.
- (3) Mobile 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) Mobile vendors shall operate in an area located entirely on private property.
- (2) The owner of the property shall provide toilet facilities to the vendor.

D. Sale of goods.

Mobile 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 mobile vendors shall only be permitted from a fully licensed mobile food service establishment.
- (2) Mobile 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.

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.

Section 2.5 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 2.6 PROHIBITED OPERATIONS

A. Location of operations.

No mobile vendor shall operate:

- (1) On public property, except during festivals or other special events approved by the Municipal Officers pursuant to a temporary mobile vendor's license;

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 mobile vendor shall operate between the hours of 12:00 a.m. and 8:00 a.m. unless authorized by the Town.

D. Generators.

The use of generators by mobile vendors shall be prohibited unless authorized by the Town.

Section 2.7 APPLICATION

A. Contents of application.

Applicants for a mobile 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.

- (1) For vendors on Public property, the application shall be filed with the Municipal Officers not less than 21 days before the date on which it is proposed to commence mobile vending operations.
- (2) For vendors on Private property, the application shall be filed with the Municipal Officers not less than 21 days before the date on which it is proposed to commence mobile vending operations.

C. Application fee.

- (1) At the time of filing the application the following fees shall be paid to the Town Clerk as established by Order of the Board of Selectpersons.
- (2) Non-profit organizations are exempt from the application fee.
- (3) The Municipal Officers may waive, in their sole discretion, application fees for temporary licenses.

D. One license per applicant.

Mobile vendor's licenses shall be limited to one per applicant.

Section 2.8 LICENSE AND APPEAL PROCEDURES

A. Public hearing.

- B.** 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. Public hearings shall not be required for temporary licenses.

Notification of denial or approval.

Any applicant requesting a mobile 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 or structures, permanent signs or portable signs, 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 unassignable. 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 is 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) Except during declared festivals or other approved events that require a mobile vendor's or occupancy license under this Ordinance, 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.

C. Sidewalk signs and other structures regulated.

- (1) The Municipal Officers are hereby authorized to promulgate from time to time such reasonable rules and regulations governing the design, construction, size and location of portable sidewalk signs as may be consistent with this Ordinance or other applicable ordinances; and in furtherance of the public interest.
- (2) The Municipal Officers are further authorized to promulgate such other regulations as may be required for the location of other installations or structures in or use of the public ways, and 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. In the event of such festival designation, mobile vendors shall be required to obtain necessary licenses. Mobile 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.

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 shall be established by Order of the Board of Selectpersons.**
- B. Fees for the issuance of a revocable outdoor dining license.**

Outdoor dining on streets, sidewalks or other public ways or public spaces shall be established by Order of the Board of Selectpersons.

C. Waiver.

The Municipal Officers may waive, in their sole discretion, license fees for nonprofit entities and participants in farmers' market, festivals and other special events.

**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.

C. 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 established by Order of the Board of Selectpersons. 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.