

TOWN OF NEW DURHAM

Transient Sales Persons

TO.03.010

PURPOSE:

To regulate transient sales for the protection of the community.

AUTHORITY:

The provisions of this Ordinance are adopted pursuant to RSA 31:102-a and requirements imposed by the State of New Hampshire under RSA 320 and/or RSA 321.

LICENSE REQUIRED:

It shall be unlawful for any person or persons to engage in the business of transient sales as defined in RSA 321 and RSA 31:102-a, in the Town of New Durham without first obtaining a license as provided herein.

TRANSIENT LICENSE:

A transient license shall permit the holder to go from door to door or place to place within the Town, for the purpose of selling goods or services as defined in RSA 320:1 and /or RSA 321:1.

DEFINITIONS:

The words "Transient Sales Person" as used herein shall be equated with the terms "Hawker" and "peddler" as defined in RSA 320:1 and RSA 321:1 and shall include any itinerant vendor, trader, farmer, merchant, or other person who sells or takes orders for merchandise from temporary or transient sales locations within the Town of New Durham, or who goes from door to door or place to place within the Town for such purposes, with the exception of the following:

- I. Any person selling the product of his own labor or the labor of his family or the product of his own farm or the one he tills.
- II. Any person conducting sales of personal household goods on his own property.
- III. Any nonprofit organization, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes when no part of the entity's earnings benefit any private shareholder or individual.
- IV. Any person conducting business in any industry or association trade show.
- V. Any person who sells exclusively antiques, used goods, or vintage items.
- VI. Sales made to dealers by commercial travelers or selling agents.
- VII. Any person who operates a permanent business in this state, occupies temporary premises, and prominently displays the permanent business' name and permanent address while business is conducted from the temporary premises.

APPLICATION PROCEDURE FOR TRANSIENT SALES:

- A. The applicant shall file a completed application form with the Town of New Durham. The applicant shall provide a copy of a current and valid NH Hawkers permit, unless exempted by

law. The applicant must also undergo a NH and FBI Criminal Background check & driver's license background check. The applicant shall be responsible for the costs of the background checks.

B. The application shall include:

1. Date of application.
2. Number of application.
3. Name, home and business address of applicant.
4. Name and address of owner of vending business if other than the applicant.
5. Description of merchandise or services to be sold.
6. Description of motor vehicle to be used including vehicle registration number.
7. State license number and effective date, if required by law.
8. Names of persons soliciting.
9. Names of last town in which they solicited.
10. One personal and one professional reference.
11. Results of current NH and FBI Criminal Record Check

C. All persons licensed under this Ordinance shall carry their New Durham license, to be produced upon request, while conducting business in the Town.

D. A copy of this Ordinance will accompany the application form.

E. No later than 30 days after the filing of a complete application, the Board shall notify the applicant of its decision on the issuance or denial of the license. In the case of a denial, the Board shall indicate the basis for denial which may include, but are not limited to, the following:

1. Fraud or misrepresentation contained in the application.
2. Over-intensive vending activities within the area or at time requested in the application.
3. Inadequate information as to the nature of the proposed business or identity of the applicant.
4. Such other reasons as the Board determines necessary for public health, safety and welfare.

F. If the Board issues a license, it may restrict operation of the solicitation to particular areas, times, or manner of operation or any combination of the foregoing.

G. Any business licensed under this Ordinance shall at all times operate in a manner which will not interfere with public safety on the streets and shall operate in such a manner as to create minimal inconvenience to the public. A licensee shall operate a business only from such places and at such times as are authorized in the license.

H. If the Board denies a license under this Ordinance, it shall give notice of the grounds therefore to the applicant. Said applicant may request a rehearing before the Board if he/she alleges mistake or error or if additional facts should be brought to the attention of the Board.

I. The Board of Selectmen will be responsible for the retention of the application and materials, and the license issued for the duration of the license plus one year, per RSA 33-A:3-a. They will be stored in a secure and locked cabinet in the custody of the office of the Board of Selectmen.

LIMITATIONS:

- A. Transient sales shall be limited to a reasonable and acceptable noise level.
- B. No transient sales person shall, within one hundred (100) feet of an established business, offer for sale any like items offered by such established business.
- C. Solicitation shall only take place between the hours of 8:00 am and 8:00 pm.
- D. Transient sales person selling food products shall be subject to health inspections and must comply with all state and local health and sanitation regulations.

EXPIRATIONS OF LICENSE:

The license period is as granted, which shall be noted on the license. All annual licenses will expire as of March 31st of the year of issuance, and shall be renewed on an annual basis.

RENEWAL:

Annual licenses cannot be automatically renewed. The licensee must reapply once during each calendar year and shall be required to make application as set forth under the "application procedure" section of this ordinance.

TRANSFER:

No license issued under the provisions of this Ordinance shall be used at any time by any person other than the one to whom it was issued. No such license is transferable. Changes in personnel require a license update for which there is no additional fee. Changes in ownership require a new application by the new owner.

REVOCAION OF LICENSE:

- A. Licenses issued under the provisions of this Ordinance may be revoked by the Selectmen after notice and hearing for any of the following causes:
 - 1. Fraud, misrepresentation or false statement contained in the application for license.
 - 2. Fraud, misrepresentation or false statement made in the course of carrying on his/her business as a transient sales person.
 - 3. Any violation of this ordinance.
 - 4. Conviction of any crime or misdemeanor involving moral turpitude.
 - 5. Conducting the business or transient sales in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- B. Notice of the hearing for revocation of a license shall be given in writing setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage pre-paid, to the licensee at there last known address, or served in hand to the licensee at least five (5) days prior to the date set for the hearing.
- C. The Board authorizes the Police Department to issue a temporary suspension of the license, if the Chief of Police or their designee determines that the Licensee has violated any section of this ordinance, and determines that the continued operation of the transient sales operation would be against the best interest of the public. This temporary suspension will

either be upheld or rescinded by the Board at the next regular business meeting, and if upheld will continue until the formal revocation proceeding.

EXHIBITION OF LICENSES:

Transient sales persons are required to exhibit their State and Local licenses in full public view at all times.

LICENSE FEES:

The fee for licensing shall be set by the Board of Selectmen. The fee is \$100 the first year, and \$50 for renewal each year. The fee is payable to the Town of New Durham. This fee is also an application fee and is non-refundable in the case of a denial or revocation.

ENFORCEMENT:

This Ordinance shall be enforced by the New Durham Health Officials and the New Durham Police Department.

PENALTY:

Any person who violates any provisions of this ordinance per RSA 31:102-a, 321:21, 320:22 shall be guilty of a class B misdemeanor and any other penalty described in the RSAs. Each continuing day of violation after notice shall constitute a separate offense and is punishable by a fine of two hundred (\$200.00) dollars for each offense.

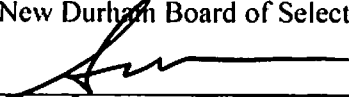
DISPOSITION OF REVENUES:

Any monies generated by this Ordinance, either by fees or fines, shall be placed in the General Fund of the Town of New Durham, NH.

If any section, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court, such portion shall be deemed a separate, distinct and independent provision, and the holding shall not affect the validity of the remaining portion.

This Ordinance shall take effect upon its adoption by the Board of Selectmen.

New Durham Board of Selectmen



Theresa Spivey

David P. Bickford



Carolee Byham
Town Clerk 6/10/2014

Created: April 19, 2007
Amended: November 15, 2010
June 2, 2014