

## ORDINANCE – TOWN OF BRENTWOOD

This ordinance shall take effect upon passage.

### HAWKERS, PEDDLERS AND ITINERANT VENDOR ORDINANCE

#### **Authority:**

Pursuant to the authority conferred by Chapter 31, Section 39, New Hampshire Revised Statutes Annotated, (RSA 31:39), the Selectboard of the Town of Brentwood adopt the following ordinances; As well as what is outlined in NH RSA 31:102-a Hawkers, Peddlers and Vendors (Appendix B) as well as RSA 31:102-b Background Checks for Certain Vendors (Appendix A.) This ordinance is not to supersede RSA 31:102-a Hawkers, Peddlers and Vendors or RSA 31:102-b Background Checks for Certain Vendors. and may be used in conjunction with it.

#### **Purpose:**

The purpose of this ordinance is to protect the safety, health, and welfare of the general public.

#### **Definitions:**

Hawker and Peddler: the terms "hawker" and "peddler" shall mean and include any person, principal or agent, who:

- Travels from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or exposing therefore, any goods, wares, or merchandise, either on foot or from any animal, cart, or vehicle; or
- Travels from town to town, or place to place in the same town, offering to perform personal services for household repairs or improvements, or solicits or induces any person to sign any contracts relating to household repairs and improvements, including contracts for the replacement or installation of siding on any residence or building; or
- Keeps a regular place of business, open during regular business hours at the same location, but who offers for sale or sells and delivers, personally or through his agents, at a place other than his regular place of business, goods, wares, or merchandise.

"Itinerant Vendor" shall mean and include 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, 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. 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, vacant lot, railroad car, or trailer temporarily occupied for the purpose of making retail sales of goods to the public.

**Exceptions:** The provisions of this ordinance shall not apply to:

- Any person selling the product of his or her own labor or the labor of his or her family or the products of his or her own farm or the one he or she tills.

- "Lemonade stands" or other similar enterprises operated solely by children under the age of 18
- Any person selling product(s) for patriotic purposes when none of the entity's earnings benefit any private shareholder or individual.
- Any person conducting sales of personal household goods on his own property.

"Farmer's Markets" and any non-profit organization, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or education purposes when no part of the entity's earnings benefit any private shareholder or individual are required to submit a permit application but will be exempt from the fee.

**License required:** No person shall engage in hawking and peddling or itinerant vending without first having been issued a license by the Town of Brentwood Selectboard or their Designee.

**License application:** Every Hawker and/or Peddler, or Itinerant Vendor shall, at least 30 days prior to selling any goods or services apply to the Selectboard for a Vendor Permit using the application form provided by the Town.

**Application review:** The Brentwood Selectboard shall review all complete applications. Incomplete applications will not be reviewed. Background checks for certain Vendors – See Appendix A. Complete applications will consist of:

- A completed and signed Town of Brentwood application form
- A copy of the applicant's valid State of New Hampshire Hawkers and Peddlers license
- The application fee as set forth in this ordinance, in the form of cash, bank, cashiers or certified check, payable to the Town of Brentwood.
- A copy of the principal's and any agent's driver's license or other State issued picture identification card.
- A copy of the applicant's, principal's and agent's criminal record from the State in which they reside as well as the State of New Hampshire.
- For food vendors only, a copy of a State Food License.

The Brentwood Selectboard/Designee shall approve a Vendor Permit application only when a review of the application materials results in a conclusion that issuance of the license will not pose a threat to the safety, health or welfare of the general public. All other applications will be denied. Examples of conditions that would result in a denial of a permit include, but are not limited to:

- A finding that the persons engaged in hawking and peddling have been convicted of an offense involving activity which if repeated would pose a threat to the citizens of Brentwood – As determined by the Brentwood Police Department.
- A finding that the persons engaged in hawking and peddling have been involved in dishonest, fraudulent, or deceptive practices leading to misappropriation or theft – As determined by the Brentwood Police Department.
- A finding that the application contains false or misleading information.

Term: License granted shall be effective for up until local or state revocation, expiration of applicant's State of New Hampshire hawkers, peddlers, and vendor's license, or at midnight, December 31 of the calendar year in which the license was granted, whichever is shorter.

Posting of Permits: Vending permits shall be posted in such a manner to be in the plain view of all customers.

Fees: Application fee \$100.00

The Town of Brentwood reserves the right to charge additional fees or require the deposit of funds in escrow to cover the cost incurred in maintaining public safety, crowd control, traffic control or other services that may be required due to the hawking and peddling or itinerate vending activities provided for under this ordinance.

**Locations where permitted:**

Hawkers and Peddlers and Itinerate Vendors are permitted, with the written permission of the landowner, to operate in the Commercial/Industrial zone, or on any other commercial property that is a lawful non-conforming use, or which has received a variance from the ZBA. The site must have sufficient on-site parking and a safe means of entrance and exit.

Hawkers and Peddlers and Itinerate Vendors are permitted to operate on town property only upon approval by the Brentwood Selectboard.

No peddler, hawker, or vendor shall have any exclusive right to any location in the public streets and sidewalks, nor shall any be permitted at a stationary location, unless the license specifically grants a stationary location, nor shall he or she be permitted to operate in any congested area where his or her operations might impede or inconvenience the public. For the purpose of this ordinance, the judgment of the Selectboard with guidance from the Police Chief, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Special condition for frozen confection vending: Hawking and peddling of frozen confections may be conducted within the public right of way of Brentwood highways and roads, provided that such activity is conducted from the side of the road, and is not conducted in the traveled portion of any public right of way. The vehicle must be clearly marked to indicate their product and shall be equipped with safety equipment as recommended by the Police/Fire Chief.

**Revocation of License:**

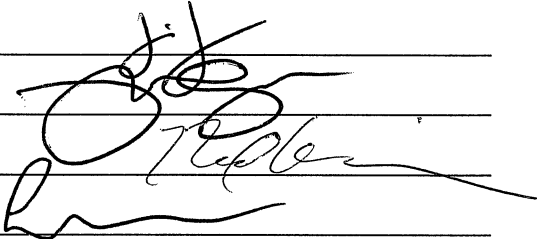
The Selectboard or their designee may, upon a determination that public safety, health or welfare is compromised by the activities provided for under a Vendor Permit, revoke such permit. The Health Officer may, upon a determination that public health or welfare is compromised by the activities provided for under a Vendor Permit, revoke such permit. Any person whose permit has been revoked under this section shall be ineligible to be a permitted hawker or peddler, or itinerate vendor, in the Town of Brentwood. The Selectboard shall notify the New Hampshire Secretary of State of any person whose permit has been revoked.

**Penalties:**

Any person who violated any provision of this Ordinance shall be guilty of a violation and subject to a penalty in the amount of \$500.00. Such person shall be deemed to have committed a separate violation for each and every day or portion thereof which any violation of the Ordinance is committed, continued or permitted by such person.

Any property owner who allows an unpermitted itinerate vendor, hawker or peddler to operate on his private property shall be subject to a \$500.00 fine for each day the unpermitted itinerant vendor, hawker or peddler is allowed to operate on his property.

Adopted: June 18, 2024



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Brentwood Selectboard

## Appendix A

### Section 31:102-a

#### **31:102-a Hawkers, Peddlers and Vendors. –**

The governing board of a city, town or village district may adopt, by ordinance or regulation, provisions for 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. Any person who violates any provision of such ordinance or regulation shall be guilty of a class B misdemeanor, and each continuing day of violation after notice shall constitute a separate offense. 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 the candidate's name placed on the ballot for the state general election by submitting nomination papers under RSA 655:40. Persons who are under the age of 14 who are selling soft drinks on family owned or leased property shall be exempt from city, town, or village district licensing requirements. Provisions adopted under this section shall be in addition to any requirements imposed by the state and may include, but shall not be limited to:

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

Source. 1973, 558:9. 1981, 515:1. 1993, 164:1, eff. July 23, 1993. 2001, 274:2, eff. Jan. 1, 2002. 2010, 298:1, eff. Sept. 11, 2010. 2021, 166:1, eff. Sept. 28, 2021.

## Appendix B

### **31:102-b Background Checks for Certain Vendors. –**

I. Any municipality may require persons who go from door to door, place to place within a town, or town to town, who sell, offer to sell, or take orders for merchandise or offer to perform personal services for household repairs or improvements, to submit to a state records check only, or both a federal and state records check. Municipalities that require a public criminal history record information check shall have such person submit to the municipality a public criminal history record information authorization form, as provided by the division of state police, which authorizes the release of the person's public criminal history record information, if any. To obtain a federal records check, such person shall submit to the municipality a criminal history record authorization form, as provided by the division of state police, which authorizes the release of the person's criminal history record information, if any, and a complete set of fingerprints.

II. For a state and federal criminal records check, the municipality shall request that such person submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. The municipality shall submit the criminal history records release form and inked fingerprint card to the division of state police which shall conduct a criminal records check through its records and through the Federal Bureau of Investigation. Fingerprints taken digitally by Live Scan or similar device shall be transmitted directly to the New Hampshire division of state police. In the event that the first set of fingerprints is invalid due to insufficient pattern, the municipality may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 10 years. Upon completion of the records check, the division of state police shall release copies of the criminal history records to the local law enforcement agency of the municipality which shall maintain the confidentiality of all criminal history records information received pursuant to this section. The municipality may charge a fee to recover the costs of such investigation.

III. To obtain a state records check only, the municipality shall submit a state criminal history records release form, completed by such person, to the division of state police.

IV. Such person shall also include the location of all municipalities in which such person seeks to transact business. Such municipalities, in accordance with their licensing requirements, shall have access to the results of the criminal history records check and the New Hampshire division of state police shall release copies of the criminal history records to such municipalities. Such person shall be responsible for any additional fees for any administrative costs incurred by the New Hampshire division of state police under this section.

Source. 2010, 298:2, eff. Sept. 11, 2010. 2018, 318:4, eff. Aug. 24, 2018. 2019, 297:3, eff. July 1, 2019.