

## CHAPTER 6

### LICENSES AND ENCUMBRANCES

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#### ARTICLE I: ENCUMBRANCE PERMITS AND LICENSES FOR USE OF PUBLIC PROPERTY

##### Section 6:101: STATEMENT OF PURPOSE

The purpose of this ordinance is to establish a comprehensive framework for the licensing and encumbering of public property within the City and aims to ensure the responsible use and management of public assets, create an efficient and transparent approval process and safeguard the interests of the community while promoting economic development. By regulating the use of public property, the City seeks to:

1. **Enhance efficiency and Transparency:** Establish efficient and transparent procedures for issuing licenses and encumbrance permits for use of public property;
2. **Promote Fair Access:** Provide the public with equitable access to public property;
3. **Preserve Public Assets:** Maintain and preserve the integrity of public property
4. **Facilitate Economic Development:** Support local businesses and economic activities by providing clear guidelines for the use of public property; and
5. **Maintain Public Safety:** Ensure that public property is used in a manner that protects the health, safety, and welfare of residents and visitors.

## **Section 6:102: AUTHORITY**

The City Council regulates the use of public property through the creation of ordinances and policies in its administration of municipal affairs. The City Manager carries out the policy decisions of the City Council and manages City property.

Public property includes but is not limited to public ways, roads, rights-of-way, streets, lanes, alleys, sidewalks, parking spaces, loading zones and other public spaces, including intrusions into the airspace over sidewalks and street ("Public Property"). Public forum areas are governed by a separate City Council policy and are excluded from the definition of Public Property in this Chapter.

The regulation of Public Property includes the issuance of permits and licenses for the temporary placement, installation, location or use of any obstruction on, in or over Public Property, including but not limited to structures, fixtures, objects, equipment or other encroachments ("Encumbrance").

No license or permit will be issued for an Encumbrance that endangers public safety, impedes the free path of travel for the public, including pedestrian and vehicular traffic, or impedes egress or access to driveways, entrances, hydrants, poles, utilities, traffic signs or other government use.

Permits and licenses for Encumbrances may be temporarily or permanently suspended in an emergency or if public interest requires such termination.

The City Manager is responsible for establishing and publishing rules, regulations, and the forms necessary for the issuance and management of encumbrance permits and licenses under this Chapter. All rules, regulations and procedures associated with these licenses and permits shall be published on the City's website.

The City Manager or designee has the authority to issue temporary encumbrance permits for the use of Public Property for a period not to exceed one year. The City Manager will submit written reports to the City Council on all temporary encumbrance permits issued each month. The City Council's acceptance of these reports shall constitute the City Council's acceptance and endorsement of the permits issued.

## **Section 6.103: TEMPORARY ENCUMBRANCE PERMITS FOR USE OF PUBLIC PROPERTY**

Permits and Licenses may be issued by the City Manager or delegee for the following Encumbrances that are in compliance with the provisions set forth above, the published rules, regulations and procedures for permits and licenses and the specific provisions set forth in this Chapter:

### **A. Projecting Signs and Awnings**

A revocable permit may be issued for signs and awnings that are affixed to private property that project over the airspace of Public Property. Signs and awnings shall comply with the dimensional requirements for height, setbacks and dimensional

standards set forth in the city's Zoning Ordinance when applied. In addition, a Certificate of Insurance naming the City as an additional insured is required. This Certificate must be maintained annually and future notices from the insurance company to the City of cancellation or loss of policy is required as a condition of the permit.

#### **B. Flags**

An annual permit may be issued for one flag per business over Public Property that does not exceed 12 square feet in area and has at least 7 feet of clearance above Public Property. A flag may be either an "open" flag or a flag that advertises the name of the business. The limitation of one flag per business does not apply to the American Flag or the New Hampshire State Flag. Flags defined in this Section are not considered signs under the City's Zoning Ordinance.

#### **C. A-Frame Signs**

An annual permit may be issued for one A-Frame sign located in Public Property on the sidewalk within the frontage where a business entrance is located. The A-Frame sign may not exceed 8 square feet in area on each side. If a business does not have sufficient frontage to place an A-Frame sign, it may place one within the frontage of an abutting business with the express written permission of the abutter. If a business is located in an alley, a wayfinding A-Frame sign may be located within the frontage of another business with the express written permission of the other business owner.

#### **D. Tables, Chairs and Benches**

Annual permits may be issued for tables, chairs, and benches for use by the general public on Public Property if, among other things, the number, size and located of the tables, chairs and benches do not impede the free path of travel for the public.

#### **E. Planters**

Annual permits may be issued for planters on Public Property if, among other things, the size and location of the planters do not impede the free path of travel for the public. Permits will be revoked if the plants in the planters are not maintained.

#### **F. Mannequins and Clothing Racks**

An annual permit may be issued for one mannequin and one clothing rack on Public Property in front of a business that sells clothing if, among other things, the size and location of the mannequin or clothing rack does not impede the free path of travel for the public. Permits will be revoked if the mannequin or clothing rack is placed in front of or impedes access to the Public Property in front of an abutter.

## **Section 6.104: SHORT-TERM CONSTRUCTION ENCUMBRANCE PERMITS**

Encumbrances of Public Property may be permitted for construction projects through the issuance of short-term Encumbrances Permits. Permits may be granted for construction project Encumbrances that may include but not be limited to scaffolding, fencing and laydown areas for construction materials. Permits may also be issued for non-construction related Encumbrances related to the trades, that may include but not be limited to moving trucks, equipment and vehicles associated with window washing and landscaping. All other permits required for construction projects, such as Excavation, Flagging and Driveway Permits, are issued after administrative review by the Department of Public Works and are not subject to this ordinance.

### **A. Short-Term Construction Encumbrance Permits**

Encumbrance Permits for up to 30 calendar days will be administered and issued by the Department of Public Works.

### **B. Short-Term Construction Encumbrance Permit Extensions**

Short-Term Encumbrances Permits issued for 30 calendar days may be extended at the discretion of the Department of Public Works for up to an additional 30 calendar days (60 days total) after administrative review by the Department of Public Works. If there is a request for an additional 30 day extension (90 days total), an extensions may require new conditions and fees. The City Manager's monthly report to the City Council will distinguish between the initial permit and each extension.

## **Section 6.105: LICENSES**

Licenses are for long-term Encumbrances that require approval by the City Council that include the following:

### **A. Construction Licenses**

Requests for construction-related Encumbrance Permits for use of Public Property over 90 calendar days will be granted only after approval by the City Council.

### **B. Revocable Licenses Requiring Recording**

When the City identifies encroachments in the City right-of-way<sup>7</sup> or other Public Property, the City Council may require the Owner to record a revocable License at the Rockingham County Registry of Deeds that sets forth the City an Owner's rights and responsibilities and memorializes the location of the Encumbrance. Revocable Licenses for recording may require Encumbrances for steps, walls, fences, pipes and underground monitoring wells.

**C. Licenses for Public Utilities**

City Council approval is required for all revocable Licenses for utility Encumbrances that include but are not limited to poles, wires and conduits that are in, on, over or within the City right-of-way or other Public Property.

**D. Licenses for Use of Public Property**

City Council approval is required for all Licenses for the use of Public Property as defined in this Chapter and licenses for the use of City Parks and Parking Lots. The issuance of these licenses does not limit or revoke the authority of the City Manager regarding Parking Lots and Parks as more fully set forth in City Ordinance Chapters 7 and 8.

**E. Valet Agreements**

Valet Agreements for the use of City parking spaces to drop off cars for valet services must be approved by the City Council after begin reviewed and recommended by the Parking and Traffic Safety Committee.’

**Section 6.106: PERMITS AND LICENSES FOR COMMERCIAL USE OF PUBLIC PROPERTY**

Under limited circumstances, some commercial use of Public Property is permitted and regulated by City Ordinance and Council Policy. These commercial uses include the following:

**A. Hawkers and Peddlers.** See Chapter 6 License, Article XIII, Hawkers and Peddlers, Section 6.1301-1306 and hawkers and Peddlers Policy 2009-04.

Hawkers and Peddlers shall not encumber Public Property with carts, stand, nonmotorized vehicle or tables for the sale or display of food or goods without first obtaining a Hawkers and Peddlers permit pursuant to the ordinance and policy set forth above.

**B. Vendor Parking Space.** See Chapter 6 License, Article XIII, Hawkers and Peddlers, Section 6.1307.

**C. Outdoor Dining.** See Chapter 6, License, Article XVII, Outdoor Dining Encumbrance Permit, Sections 6.1701-1707.

**D. Taxis.** See Chapter 7, Vehicles, Traffic and Parking, Article II, Taxis, Section 7.201-7.217.

**Section 6.107: SPECIAL EVENT PERMITS**

The City has a strong commitment to foster support for local nonprofits and the arts and culture community through granting special event permits that allow these organizations to host diverse events on Public Property because they add vitality and support the economy of our community. Because these events take place on Public Property, they require significant municipal service support, that may include but not be limited to: Police details; inspections from

Fire and Building Inspections Departments; street closure, barriers and logistical support from the Department of Public Works; food vending review by the Health Department; and review of alcohol service, if applicable, by the City's liquor Review Committee, which is a prerequisite for the issuance of a liquor license from the New Hampshire Liquor Commission. Use of municipal services for Special Event Permits requires timely application and payment of associated fees for other permits that may be required for the event, that include but are not limited to:

- A. Temporary Event Food Permit (Health Department)**
- B. Building Permit for Tents (Inspections Department)**
- C. Temporary Permit to Operate a Place of Assembly (Fire Department)**
- D. Liquor Review Committee Approval**
- E. New Hampshire Liquor Commission Liquor License**

City Council approval is required for the initial application for a Special Event Permit and the Council grants the City Manager authority to act on the application. The other permits associated with special events shall be issued by the appropriate City Departments.

#### **Section 6.108: REQUIRED AND PROHIBITED CONDUCT OF APPLICANT**

Every Applicant that is issued an encumbrance permit or license shall:

- A.** Agree to permit the City to conduct all reasonable inspections of the encumbrance area;
- B.** Comply with all applicable governing laws, codes, City ordinances, State statutes, and City rules, regulations and policies;
- C.** Maintain the encumbrance area in a safe, clean and appropriate manner and take all action necessary to protect public safety;
- D.** Refrain from damaging the encumbrance area and restore it to its original condition upon termination of the permit or license except as may be otherwise approved;
- E.** Refrain from occupying the encumbrance area after the expiration of the permit or license or at any time during periods of revocation of suspension;
- F.** Remove all structures, fixtures, object, equipment or other encroachments ("Encumbrances") from the encumbrance area after the term of the permit or licenses has expired. If not removed, the City may remove and store all Encumbrances and assess a \$250 removal and storage fee. If the fee is not paid, or the Encumbrances are not retrieved, ownership of the Encumbrances may be forfeited to the City; and

- G.** Comply with all terms, conditions and other additional requirements set forth in the encumbrance permit or license, when applicable, agree to indemnify the City, to name the City as an additional insured in the amount prescribed and to pay all permit and license fees and fees for extensions.

**Section 6.109: DENIAL, SUSPENSION, REVOCATION AND PENALTIES**

**A. Denial and Temporary Suspension:**

The City may deny or temporarily suspend any encumbrance permit or license if it interferes with special events or for any maintenance or construction which requires closure or encumbrance of any public road, right-of-way, sidewalk, parking space, loading zone or other Public Property.

**B. Suspension and Revocation:**

Encumbrance permits and licenses will be suspended or revoked for breach of the terms and conditions of the permit or license and for failure to comply with this Chapter. The encumbrance permit or license will be suspended 48 hours after receipt of written notice from the City. No 48 hours' notice is required if it is an emergency.

**C. Penalties**

Any person who violates this ordinance or the terms and conditions of the encumbrance permit or license issued pursuant to this Chapter, including those who fail to obtain permits and licenses, shall be subject to all penalties set forth in City Ordinance, Chapter 1, Article XIII and all other additional remedies permitted by law.

**Section 6.110: APPEALS TO CITY COUNCIL**

Any applicant denied a permit or license through the administrative review process may appeal to the City Council for a de novo review within 30 days of the denial. Such appeals shall be submitted to the City Clerk and shall state the date of the denial of the permit or license being appealed and a brief description of the basis for appeal. The City Clerk will docket the appeal and will put all timely filed appeals on the next available City Council Agenda.

## **ARTICLE II: BILLIARDS AND BOWLING**

### **Section 6.201: LICENSE REQUIRED**

No person shall open, keep, maintain, or continue any billiard room or place where the game of billiards is played or any bowling alley in this City or place wherein the game of nine pins or ten pins is played or keep any billiard table or bowling alley in this City for public use unless the City License Officer shall have granted a license therefor and said license is endorsed by the Chief of Police.

Such license is valid only until May 1 following the date of issue, and the fee to be determined in accordance with Chapter 1, Article XVI or similar wording. The penalty for keeping a billiard room and bowling alley without a license is \$20.00 for each billiard table, pool table, or bowling alley. (Amended 4/1/96) (Amended 3/18/2002).

### **Section 6.202: HOURS**

- A. Any person who keeps a billiard room or billiard table as aforesaid or has the care or control thereof shall not allow or permit the same to be kept open or used between the hours of 1:00 a.m. and 5:00 a.m. (Adopted 9/25/89)
- B. Any person who keeps a bowling alley as aforesaid or has the care or control thereof shall not allow or permit the same to be kept open or used between the hours of 1:00 a.m. and 5:00 a.m. (Adopted 9/25/89)

### **Section 6.203: PENALTY FOR VIOLATION BY LICENSEE**

If the holder of such a license violates the provisions of Section 6.202 of this Ordinance, he shall be fined not less than \$1.00 nor more than \$100.00 for each offense.



### **ARTICLE III: MODEL SLOT CAR RACING**

#### **Section 6.301: LICENSE REQUIRED**

No person shall open, keep, maintain or continue any room or place in this City wherein there are lanes or places for the slot racing of model cars unless the City License Officer shall have granted a license therefor and said license is endorsed by the Chief of Police and the City Electrical Inspector.

#### **Section 6.302: FEE**

Fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).

#### **Section 6.303: TERM**

Such license shall be valid for the period of one year from the date of issuance.

#### **Section 6.304: HOURS**

The hours of operation for such licensed places shall be the same as is provided in Section 6.202 of the Revised Ordinances of the City of Portsmouth.

#### **Section 6.305: PENALTY**

Any person violating the provision of this Ordinance shall be fined not more than \$100.00 for each offense.

## **ARTICLE IV: COIN OPERATED AMUSEMENT DEVICES**

### **Section 6.401: DEFINITIONS**

The following definitions shall govern the use of the terms defined whenever such terms are used in this Ordinance:

- A. "Amusement Device" as used herein means any amusement machine or device operated by means of the insertion of a coin, token or similar object, for the purpose of amusement or skill and for the playing of which a fee is charged. The term does not include vending machines in which are not incorporated gaming or amusement features, nor does the term include any coin operated mechanical musical devices.
- B. "Proprietor" is hereby defined to be any person, firm, corporation, partnership, association, or club who as the owner, lessee, or proprietor has under his or its control any establishment, place or premises in or at which an amusement device is placed or kept for use of play, or on exhibition for the purpose of use or play.

### **Section 6.402: LICENSE REQUIRED**

- A. No person, firm or corporation shall engage in the business of being a proprietor of amusement devices unless said person, firm or corporation is properly licensed under the provisions of these Ordinances.
- B. Each license issued under this Article shall commence on the date of issue and shall expire one calendar year from the date of issue.
- C. Each license issued under this Article shall be evidenced by a certificate issued by the City Clerk stating the number and general type of devices licensed, which certificate shall be posted in a conspicuous location in the place where the machines are located.
- D. Each license issued under this Article shall be non-assignable and non-transferable.

### **Section 6.403: LICENSE APPLICATION, PROCEDURE AND FEES**

- A. Application for License (Non-Transferable): Application for license hereunder shall be filed in writing with the City Clerk on a form to be provided by the City, and shall specify the following:
  - 1. The name and address of the applicant and if a firm, corporation, partnership, or association, the principal officers thereof and their addresses.
  - 2. The address of the premises where the licensed device or devices are to be operated, together with the character of the business as carried on at such place.
  - 3. A general description of the type of amusement devices to be licensed; for example, pinball machines, pool tables, video games, etc.
  - 4. The number of each such type of amusement device for which the applicant seeks to be licensed.

B. Licensing Procedure

The City Clerk shall refer a copy of the application to the Chief of Police, who shall promptly investigate the premises in which the amusement devices are to be kept as well as the applicant's record; and refer one copy to the Electrical Inspector who shall promptly inspect all wiring and connections for the amusement devices to determine that they comply with the Electrical Code of the City of Portsmouth. The Chief of Police and Electrical Inspector shall report their findings to the City Clerk who shall issue a license following a favorable report from each.

C. License Fees

Fees to be determined in accordance with Chapter 1, Article XVI or similar wording. In no case shall any portion of said fee be repaid to the licensee. (Amended 3/18/2002)

D. Increasing the Number of Devices

Any proprietor licensed under the provisions of this ordinance may file an application with the City Clerk to increase the number of amusement machines so licensed. Such application for increase shall be acted upon in the manner of acting upon an original application. Upon the granting of such an increase the application shall surrender his existing license to the City Clerk. The City Clerk shall, upon payment of a fee increase calculated by multiplying the increase in amusement devices by \$75.00, issue a new license for the remainder of the term of the original license showing the number and types of devices licensed thereunder.

**Section 6.404: GENERAL OPERATING REGULATIONS**

No proprietor shall allow any person under the age of sixteen years to operate or play any amusement device during regular public school hours.

**Section 6.405: VIOLATIONS**

- A. Any person, firm or corporation who violates any provision of this Article shall be guilty of a violation and be subject to a fine of up to \$100.00 per day each day on which such a violation occurs.
- B. Notwithstanding the provisions of Section 6.405, the Mayor and City Council may suspend or revoke the amusement device license or licenses of any person, firm, or corporation who violates or allows the violation of any provisions of this Article. A public hearing shall be held by the Mayor and City Council prior to any such suspension or revocation.

## **ARTICLE V: BOXING AND WRESTLING**

### **Section 6.501: LICENSE REQUIRED**

No boxing match or wrestling match at which an admission price is charged shall take place unless a license therefor shall first be obtained from the City License Officer and said license is endorsed by the Chief of Police.

### **Section 6.502: FEE**

Every such license shall be in writing and shall specify the days upon which such match may take place. Fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).

### **Section 6.503: PENALTY**

If the holder of such a license shall violate the provisions of Section 6.501 and Section 6.502, he shall be fined not less than \$1.00 nor more than \$100.00 for each offense.

(Article IV Adopted 1/17/83)

**ARTICLE VI: (Reserved for Future Use; Deleted in entirety 10/22/2012)**

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## **ARTICLE VII: DOGS AND OTHER PETS**

### **Regulation of Animals in General**

#### **Section 6.701: ANIMAL BITES**

It shall be the duty of every person bitten by an animal, or his or her parent or guardian, and any attending physician, to report to the Animal Control Officer the bite within twenty-four (24) hours. The report shall describe the circumstances of the bite and the name, address and telephone number of the owner or keeper of the animal to the extent known.

#### **Section 6.702: NUISANCE ANIMALS**

No owner, keeper or other person having control shall permit an animal to be a nuisance animal. For the purposes of this section, nuisance animal means any animal or animals which:

1. Molests or harasses passersby, domestic animals or passing vehicles in the public way;
2. Attacks or threatens persons or other domestic animals;
3. Punctures the skin of any person or domestic animal;
4. Damages property other than that of its owner;
5. Defecates off the premises of the animal's owner, and the owner, or other individual in control of the animal, fails to remove such deposit immediately;
6. Barks, whines, howls or cries in a continuous fashion for more than thirty (30) minutes.

#### **Section 6.703: CRUELTY**

It shall be unlawful to torture, torment or neglect any animal as provided in RSA 644:8 and the penalties set forth therein shall apply.

#### **Section 6.704: RABIES VACCINATION**

Every owner or keeper of any dog, cat or ferret shall be required to obtain such rabies vaccination as may be proscribed by RSA 436-100 as it may from time to time be amended.

### **Regulation of Dogs**

#### **Section 6.705: DEFINITIONS**

The following definitions shall apply to this article:

*At-large.* At-large shall mean not under the control of the owner, or another individual either by leash, cord, chain or other similar means of physical restraint.

*Dog.* Dog shall include both male and female of the canine species. Dog shall also mean any animal which is considered to be a wolf-hybrid as defined in RSA 466-A.

*Enforcement official.* Enforcement official when used herein shall mean any Animal Control Officer, Police Officer, or other individual authorized to enforce the provisions of this chapter and such state statutes pertaining to animals.

*Keeper.* A keeper shall be any person or persons, firm, association or corporation who has temporary control or responsibility for a dog with the permission of the Owner.

*Owner.* Owner shall include any person or persons, firm, association or corporation owning, keeping or harboring a dog. The owner identified on any current dog license shall be prima facie evidence of the ownership of the dog.

*Vicious dog.* Vicious dog shall mean a dog that, without provocation, attacks or bites a person or other domestic animal.

#### **Section 6.706: AT-LARGE PROHIBITED**

- a. Prohibition. Except as exempted below, no person shall permit a dog owned by him or her or under his or her control to be at-large as defined by this Ordinance or to trespass upon the property of another, public or private.
- b. Exemptions. A dog shall not be deemed at-large if it is:
  1. On the premises of the dog's owner;
  2. On the premises of the person under whose control the dog is supervised ;
  3. On the premises of another person as long as that person has given permission for the dog to be at-large;
  4. In any designated off-leash dog area managed and regulated by the City of Portsmouth. Designated off-leash areas shall be any City property posted under the authority of the Public Works Department as an off-leash area.
- c. No Defense. Failure of a Keeper to comply with this provision shall not relieve the Owner of responsibility from compliance.

#### **Section 6.707: CONDUCT IN OFF-LEASH AREAS**

- a. Voice Control and Observation on Private Property. Every person who allows a dog to be off-leash in the designated areas under section 6.706(b)(1)- (3) shall maintain voice control over the dog and shall keep the dog under observation at all times unless the dog is contained by an invisible fence system or enclosure sufficient to prevent the dog from leaving the premises.
- b. Voice Control and Observation on Public Property. Every person who allows a dog to be off-leash in a designated area under section 6.706(b)(4) shall, unless excepted under subsection c below, maintain voice control over the dog and shall keep the dog under observation at all times.



- c. South Mill Pond Dog Park Rules: Dogs are permitted to be off-leash and not under voice control in the dog park. Due to the risks associated with this activity, the following shall apply:
1. Entry into the dog park is restricted to persons age 12 and older
  2. Dogs must have current licenses and vaccination tags;
  3. Dogs must be under observation;
  4. Dogs must be spayed or neutered that are one year or older;
  5. Spike and choke collars must be removed; and
  6. Dog owners are responsible for their dogs' actions.

#### **Section 6.708: LICENSE**

Every owner of a dog more than four (4) months old shall be required to license such dog within 30 days of ownership and annually thereafter with the City Clerk in the manner proscribed by RSA 466 as it may be from time to time amended. The fee for this license shall be set at the maximum amount permitted by state law. Failure to license any dog as provided in this section shall be a violation and the penalty shall be \$25.00 and not those penalties set forth in Section 6.710. [Amended 04/16/2012]

#### **Section 6.709: REMOVAL OF DOG WASTE REQUIRED**

The owner, keeper or person in control of any dog shall be responsible for the removal of any defecation deposited by such dog on any public or private property.

#### **Penalties, Impoundment and Enforcement**

#### **Section 6.710: PENALTIES**

An offense of any provision of this chapter by any person shall be deemed a violation and shall be punishable by the following penalties:

1. First offense. A first offense of any provision of this chapter in any twelve-month period shall be punishable by a fine of fifty dollars (\$50.00)
2. Second offense. A second offense of any provision of this chapter in any twelve-month period shall be punishable by a fine of one hundred dollars (\$100.00).
3. Third and subsequent offenses. A third or subsequent offense of any provision of this chapter in any twelve-month period shall be punishable by a fine of two hundred dollars (\$200.00).

In addition to the penalties provided in this section, any animal found in violation of this chapter may be impounded as provided in Section 6.711 of this chapter.

## **Section 6.711: IMPOUNDMENT**

- a. Authority to Impound. Animals who have bitten or are in violation of any provision of this chapter may be taken by any enforcement official and impounded in a humane manner.
- b. Place of Impoundment. Animals shall be impounded with such area veterinarians and/or animal welfare organizations as any enforcement official may deem reasonable and appropriate.
- c. Impoundment and Boarding Fees. The owner of any animal impounded under the provisions of this chapter shall be responsible for all impoundment and boarding fees. Owner shall make payment directly to the veterinarian or animal welfare organization to obtain release of the animal.
- d. Disposition of Unredeemed Animals. If any impounded animal is not redeemed within (7) days of its impoundment, it may be adopted or given away in accord with the policies and practices of the veterinarian or organization responsible for impoundment. If any unredeemed animal is not adopted or given away because of disease, temperament or other cause, it shall be euthanized in a humane way. The impoundment period may be waived by the enforcement official in case of a severely injured animal whose owner cannot be located or is unwilling to claim the animal.
- e. Collection. Any sums owed under this chapter may be collected in a civil action brought under this section.
- f. Interference with Impoundment. Any person who interferes with the impounding of an animal or releases, or who attempts to release, an impounded animal contrary to this article shall be in violation of this chapter and may be subject to such additional charges as may be applicable under the criminal code.
- g. Notice of Impoundment. Within twenty-four (24) hours of the impoundment of any animal, the enforcement official shall make every reasonable attempt to notify the owner of the impounded animal of such impoundment. Such notice shall include either personal contact with the owner or a written notice posted at the dwelling house of the owner.
- h. Surrender for Impoundment. The enforcement official may elect to demand the surrender of any animal when there are reasonable grounds to believe the safety of the public or the animal will be benefited by such action. Reasonable grounds shall include without limitation: the impoundment of any animal that has bitten; risk of flight with the animal; or that the animal is or will within 48 hours be the subject of any complaint filed with the Animal Control Committee. The enforcement official shall provide a written summary to the Owner of the reasons for the demand for surrender. Failure to surrender any animal upon demand shall be a violation of this ordinance the penalty for which is \$100 per day and not the penalties set forth under 6.710.

**Section 6.712: ANIMAL CONTROL COMMITTEE**

- a. Animal Control Committee Established. For purposes of this section, an Animal Control Committee is established. The Animal Control Committee shall be comprised of the Police Chief or his/her designee a veterinarian who shall be paid for his/her time, and a resident of Portsmouth appointed by the Mayor. The Police Chief or his/her designee shall be the Chair of the Committee. The designated Animal Control Officer shall be the prosecuting officer for any complaint brought before the Committee.
- b. Vicious Dogs. The Animal Control Officer or a City resident may make a written complaint directed to the Chair of the Animal Control Committee that a dog is alleged to be vicious as defined in Section 6.705.
- c. Repeated Dog at Large. In the event that any dog shall be found to be at-large three (3) or more times in a twelve-month period, the Animal Control Officer or a City resident may make a written complaint directed to the Chair of the Animal control Committee.
- d. Repeated Nuisance Animals. In the event that any animal shall be found to be a nuisance three (3) or more times in a twelve-month period, the Animal Control Officer or a City resident may make a written complaint to the Chair of the Animal Control Committee.
- e. Procedure. The Committee shall hear all complaints described in paragraphs b, c and d of this section. All hearings shall be public and the rules of evidence shall not apply. If the animal is impounded when the written complaint is filed, the hearing shall be within fourteen (14) days. All other complaints shall be heard within thirty (30) days.
- f. Orders. The Animal Control Committee may issue such orders as are necessary to protect the public and/or the animal. Such orders may include, but are not limited to: confinement in a secure enclosure or other similar restriction; muzzling; training; adoption; restricting the sale or transfer of the animal; requiring permanent identification; or euthanization in a humane manner. The Committee shall also have the authority to require proof of owner's adequate insurance or resources in the event of any future claims for damage by the subject animal. In addition, the Animal Control Committee may revoke the privilege of any owner to keep, harbor or have custody of any animals while in the City and that no new privileges be granted. The Animal Control Committee shall have the authority to modify such orders without hearing upon the agreement of the Owner and the enforcement official that a modification would be in the best interest of the public or the animal.
- g. Penalty For Violation Of Orders. Any person who violates any provision of any order of the Animal Control Committee shall be in violation of this ordinance and subject to a penalty of fifty dollars (\$50.00) for each day of non-compliance.

**Section 6.713: INTERFERENCE WITH ENFORCEMENT OFFICIALS**

Any person or persons who hinders, interferes with, obstructs or uses abusive or profane language against any enforcement official when in the course of their duties shall be in violation of this ordinance and subject to a penalty of \$100.00.

**Section 6.714: PAYMENT OF PENALTIES**

Any penalties and fines assessed pursuant to this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial.

**Section 6.715: SEPARABILITY OF PROVISIONS**

Each provision of this Ordinance shall be deemed independent of all other provisions herein, and if any provision of this Ordinance is declared invalid, all other provisions shall remain valid and enforceable.

(Ordinance deleted in its entirety and replaced on May 16, 2005)

**ARTICLE VIII:**

*RESERVED*

(Billboards deleted in its entirety 4/1/96)

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## **ARTICLE IX: CIRCUS**

### **Section 6.901: LICENSE REQUIRED**

No person, firm, or corporation shall conduct any circus or outdoor amusement of a like nature without having first obtained a license from the City License Officer who shall require approval and endorsement from the City Council, the Building Inspector, and the Police Chief prior to the issuance of said license. (Adopted 3/4/85)

Be it further ordained that the sentence in Section 6.901(C) which reads, "an application shall be filed with the City Clerk ten days prior to operating..." shall be amended to require that said application shall be filed with the City Clerk thirty days prior to operation of the circus. (Adopted 3/4/85)

- A. Intent of Ordinance: The purpose of this Ordinance is to guard against personal injury in the operation of amusement devices, fairs, carnivals, circus and any such type of entertainment utilizing portable equipment and/or temporary structures.
- B. Definitions:
  - 1. Amusement Device: A contrivance or combination of contrivances designed or intended to entertain or amuse people and which is of such nature that accidental personal injury may be incurred in its assembly, disassembly or use.
  - 2. Carnivals: An enterprise principally devoted to offering amusement or entertainment to the public in, upon or by means of amusement devices or temporary structures in any number of combination, whether or not associated with other structures or forms of public attraction.
  - 3. Circus: An enterprise principally devoted to offering entertainment and/or using an enclosure such as a tent or other temporary structures to house the public and/or animals.
  - 4. Fair: An enterprise principally devoted to the exhibition of the products of agriculture or industry and at or in connection with which amusement devices and temporary structures are provided.
  - 5. Manager: A person having possession, custody or managerial control of an amusement device or temporary structure at a carnival, circus, fair, whether as owner, lessee, agent, or otherwise.
  - 6. Temporary Structures: A structure designed to be relocated from time to time with or without disassembly and used or intended to be used for amusement purposes for public occupation in connection with such purposes.

C. Application: An application shall be filed with the City Clerk thirty days prior to operating, containing the following information: (Amended 3/4/85)

1. Name and address or owner, sponsor and on-site manager;
2. Street location;
3. Approximate land size being utilized;
4. Approval for public property;
5. Proposed intent of such activity;
6. Number of temporary structures and types;
7. Date from beginning to end and time of operation during each day;
8. Type and amount of insurance and/or bond;
9. Age, description and date of last major overhaul for each amusement device;
10. Explain any and all equipment failures resulting in injury for the past twelve months;
11. Number of seats, grandstands, etc.;
12. Permit fees shall be submitted with the application.

Fees to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).

Any false information filed on the Application shall be deemed a violation.

D. Procedure: All equipment will be inspected prior to operating. All equipment found in violation will be labeled by a placard large enough to be seen by the public, warning that the apparatus is hazardous. The device will be closed until corrective action to alleviate the violations have been made and thoroughly re-inspected. Upon completion of inspection, a permit will be issued to the Manager allowing operation for a definite number of devices, structures and amusements. The permit is granted on the express condition that all provisions of this Ordinance are conforming but may be revoked at any time upon violation of any provision of said Ordinance or any other Ordinance of the City of Portsmouth.

E. Injuries: All injuries incurred on any equipment while in the City of Portsmouth shall be reported immediately to the Inspection Department. The Manager shall report the nature of the injury, the equipment injured on and the cause of the injury. All equipment on which the injuries occurred shall be reinspected prior to further operation. The Inspection Department shall have the authority to allow or disallow any equipment not suited for public or private use.

- F. Bonding: Entertainment on public property shall post a bond or the equivalent for protection of said property. The amount and determination shall be empowered by the governing official.
- G. Inspection Criteria: The Inspection Department may adopt from time to time, such rules and regulations as may be deemed necessary to carry into effect the provisions of this Ordinance.
- H. Fencing: All exposed machinery used in operation of the activity shall be fenced or isolated by other means to restrict the area around the equipment from the general public.
- I. Electrical Code:
1. The National Electrical Code, 1971 or latest edition, by National Fire Protection Association and supplementary codes throughout this Ordinance shall be applicable for all electrical wiring and any electrical equipment.
  2. All electrical outlets and/or circuits shall have an approved ground fault protection system so rated for each outlet or circuit to protect against line to ground shock.
  3. All equipment shall be so located that contact with any type of utility will be avoided.
- J. Tents, Grandstands and Air Support Structures: For the purpose of this Ordinance, the provisions set forth in the National Fire Protection Association pamphlet #102, Standards for Tents, Grandstands and Air Support Structures, used for places of Assembly, 1967 or latest edition, are hereby adopted and made part of this Ordinance.
- K. Fire Extinguishers: Approved fire extinguishers shall be provided where necessary to secure reasonable and adequate protection from fire hazards.
- L. Flammable Liquids and Gases: Gasoline and other volatile liquids and flammable gases when stored shall be kept in reasonably cool and ventilated places. Such liquids shall be in approved safety cans. Smoking and the carrying of lighted cigars, cigarettes or pipes is prohibited in any area where such liquids or gases are stored or are transferred from one container to another.
- M. Flammable Wastes: Flammable waste such as oily rags and other flammable materials shall be placed in covered metal containers which shall be kept in easily accessible locations. Such containers shall not be kept at or near exits.
- N. Cleanliness: A suitable number of metal containers for refuse shall be provided in and around amusement devices and temporary structures. Excessive accumulation of trash or refuse shall be promptly removed. All parts of amusement devices and temporary structures used by passengers or customers shall be maintained in a clean condition.



- O. **Live Animals:** It shall be unlawful for any person/persons, business, organization or corporation to offer, sell, auction, exhibit, display, give or in any manner convey ownership to any other person/persons as a premium, prize, gift or bonus of any live, wild or domestic creature, by auction, lottery, raffle, game of chance or skill and whosoever does so shall be guilty of violation of this Ordinance and may be punished as prescribed in this Ordinance and each incident, or day, in violation shall constitute a separate offense or violation.
- P. **Severability:** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of the Ordinance which can be given affect without the invalid provision or application and to this end the provisions of the Ordinance are declared to be severable.
- Q. Nothing in this Ordinance shall be construed to prevent the enforcement of other laws which prescribe more restrictive limitations.
- R. Any violation of the requirements of this Ordinance or any amendments thereof, or of any permit issued hereunder, except where otherwise provided by statute, the owner, amusement manager, sponsor or agent shall be liable to a penalty of not less than \$100.00 per day for each violation thereof and the permit to operate may be revoked by the Inspection Department.

#### **Section 6.902: FEE**

Fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).

#### **Section 6.903: PENALTY FOR FAILURE TO LICENSE**

Any person who shall violate Section 6.901 of this Ordinance shall be fined not exceeding \$100.00.

#### **PUBLIC SAFETY (STATE LAW)**

Ch. 5 (HB 10) requires persons desiring to conduct a public dance, circuses or carnival to apply for police attendance at the function. Subject to written approval of the governing or licensing body of a community, the Police Chief determines the necessity of police attendance and assigns officers to be paid for by the applicant. The Police Chief has authority to assign police details to any public meetings or functions which may involve traffic problems, disturbances, or endanger public health, safety or welfare. Communities and the police are immunized from any decision not to detail police to any public meeting or function. (Adopted 5/31/85)

COMMENT: This law clarifies a 1983 law, in a Constitutional sense, that seemed to require police permission and, perhaps, presence for virtually any type of meeting by anyone.

**ARTICLE X.     *RESERVED FOR FUTURE USE***

(Entire Article – THEATRICALS, PARADES, OPEN AIR MEETINGS deleted in its entirety 12/8/2025).

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**ARTICLE XI.    *RESERVED FOR FUTURE USE***

(Entire Article - THEATRE deleted in its entirety 7/09/90)

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## **ARTICLE XII: HOTELS, ETC.**

### **Section 6.1201: LICENSE REQUIRED**

No person shall carry on the business of a hotel or public house without first having secured a permit from the City License Officer to do so and filing with the City License Officer a statement containing the names and addresses of the officers, providing said enterprise shall be conducted by a corporation or otherwise, the names and addresses of all persons interested in the management of said business and the nature of their respective interests.

### **Section 6.1202: PENALTY FOR FAILURE TO LICENSE**

Any person who violates the provisions of this Ordinance shall be fined not more than \$100.00 for each day the hotel or public house is operating without a license.

## **ARTICLE XIII: HAWKERS AND PEDDLERS**

### **Section 6.1301: LICENSE REQUIRED**

A person shall not engage in the business of peddler, as defined in RSA 320:1, within the corporate limits of the City of Portsmouth without first obtaining a license therefore as provided herein.

### **Section 6.1302: DEFINITIONS**

For purposes of this Ordinance, the following definitions shall apply:

**Motor Vehicle:** Any vehicle used for the displaying, storing, or transporting of articles offered for sale by a vendor which is required to be licensed and registered by the Department of Motor Vehicles.

**Peddler:** As used herein shall be as defined in RSA 320:1 and shall include any person, whether a resident of the City of Portsmouth or not, traveling by foot, wagon, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, stand, automotive vehicle, railroad car, or other vehicle or conveyance and includes one who solicits orders and as a separate transaction makes deliveries to purchasers. The word "peddler" shall include "hawker", "vendor" and "huckster". The definition of the term, "peddler" shall include each horse drawn carriage for hire which operates within the City limits. (Amended 9/18/95)

**Public Assembly Buildings:** As used herein shall be as defined in the BOCA Basic/National Building Code/1984, Article III, Sections 302.1 - 302.6.

**Public Property:** Any city owned or controlled property including but not limited to streets and sidewalks.

**Sell:** Shall include any offer to sell or attempt to sell.

**Stand:** Any push-cart, wagon, or any other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor. (Amended 6/21/99).

**Vendor:** A peddler who on public property sells food, beverages or merchandise from a stand, motor vehicle or his person.

### **Section 6.1303: APPLICATION**

The license required by this Article shall be issued in accordance with the General Licensing Ordinance, Article 6.107.

The application for a peddler's license shall include, in addition to the information required by the General Licensing Ordinance:

- A. The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the business and of any stand or motor vehicle to be used in the operation of the business.
- B. A description of the type of food, beverage or merchandise to be sold, and in the case of products of farm or orchard, whether produced or grown by the applicant.
- C. A description and photograph of any stand or motor vehicle to be used in the operation of the business, including the license and registration number of any motor vehicle used in the operation of the business.
- D. A certificate of insurance or other proof acceptable to the Licensing Officer that the applicant has been issued an insurance policy by an insurance company licensed to do business in the State of New Hampshire, protecting the licensee and the City from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the license. The insurance policy shall provide that the policy shall not be terminated or cancelled prior to the expiration date except with thirty (30) days advance written notice to the City. The policy shall provide combined single limit coverage in the amount of \$1,000,000 for personal injury and property damage. The City of Portsmouth shall be named as additional insured thereunder. (Amended 6/21/99)

### **Section 6.1304: ISSUANCE**

Not later than thirty (30) days after the filing of a completed application for a vendor's license, the applicant shall be notified by the Licensing Officer of the decision on the issuance or denial of the license. The Licensing Officer shall consider the standards set forth in this Article and the Ordinances of the City of Portsmouth in determining whether to grant a license.

If the issuance of the license is approved, the Licensing Officer shall issue the license. If the license is denied, the applicant shall be provided with a statement of the reasons for the denial. The reasons shall be entered in writing on the application. The applicant shall be entitled to a hearing pursuant to Section 6.1316. All licenses issued under the provisions of this chapter shall expire on June 30 annually.

All licenses issued hereunder shall be displayed by the vendor on the vending cart in a place visible to the public.

## **Section 6.1305: PROHIBITED CONDUCT - VENDOR**

A vendor shall not:

- A. Vend within one thousand (1,000) feet of the grounds of any elementary or secondary school between one hour prior to the start of the school day and one hour after dismissal at the end of the school day;
- B. Vend within one thousand (1,000) feet of any hospital;
- C. Vend within fifty (50) feet on the same street of any public assembly building while such building is in use;
- D. Vend on any street or sidewalk where vending is otherwise prohibited;
- E. Leave any stand or motor vehicle unattended;
- F. Store, park, or leave any stand overnight on any street or sidewalk, park any motor vehicle other than in a lawful parking place, in conformance with City and state parking regulations;
- G. Sell food or beverages for immediate consumption unless he has available for public use his own litter receptacle which is available for his patrons' use;
- H. Leave any location without first picking up, removing and disposing all trash or refuse remaining from sales made by him;
- I. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the stand or motor vehicle, except as expressly indicated in the application for a license;
- J. Set up, maintain or permit the use of any table, crate, carton, rack, sign, or any other device to increase the selling or display capacity of his stand or motor vehicle, where such items have not been described in his application;
- K. Solicit or conduct business with persons in motor vehicles;
- L. Sell anything other than that which he is licensed to vend;
- M. Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loud speaker, public address system, radio sound amplifier or similar device to attract the attention of the public;
- N. Vend without the insurance coverage specified in Section 6.1303(d);
- O. Vend without a fire extinguisher of a type approved by the Fire Chief or his designee if the vendor utilizes heat generation equipment.

### **Section 6.1306: PROHIBITED CONDUCT - SIDEWALK VENDORS**

In addition to the conduct prohibited by Section 6.1305, a vendor selling from a stand on the sidewalk shall not:

- A. Vend at any location where the unobstructed sidewalk area after deducting the area occupied by the stand is less than three (3) feet in width;
- B. Vend within thirty (30) feet of any driveway entrance to a police or fire station, or within ten (10) feet of any other driveway;
- C. Allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's written permission.

### **Section 6.1307: PROHIBITED CONDUCT - VENDOR FROM MOTOR VEHICLE**

In addition to the conduct prohibited by Section 6.1305 a vendor selling from a motor vehicle shall not:

- A. Conduct his motorized business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, or create or become a public nuisance, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police, or sanitation vehicles;
- B. Stop, stand, or park his vehicle upon any street, or permit it to remain there except on the roadway at the curb for the purpose of vending therefrom;
- C. Stop, stand, or park his vehicle upon any street for the purpose of selling or sell on any street under any circumstances during the hours when parking, or stopping or standing has been prohibited or is prohibited by statute by signs or curb markings or Ordinance;
- D. Vend from a municipal parking space except from those locations, not to exceed more than three (3) locations, identified for vending by the Parking Committee and ratified by the City Council through the acceptance of the Parking Committee's minutes and subject to the following limitations: (Amended 02/16/2010)

The vending spaces shall be available from April 15 – November 15 of each year.

In order to utilize such spaces, vendor must be the highest qualified bidder for use of such vending space, agreeing to all terms and conditions of the bid.

The Parking Committee shall be responsible for preparing annually a bid document in coordination with other municipal departments, including the purchasing and legal departments.

There shall be a minimum bid price of \$5,000.00 or such minimum bid price as may be established in accord with Chapter 1, Article XVI relative to the adoption of fees by City Council budget resolution.



### **Section 6.1308: PROHIBITED LOCATIONS**

Vending or Peddling is specifically prohibited at the following locations:

- A. On the sidewalk area in front of the North Church bounded by Pleasant Street, Church Street, Congress Street and the front façade of the Church. (Adopted 12/02/02)

### **Section 6.1309: HEALTH AND SANITATION REQUIREMENTS FOR FOOD AND BEVERAGE VENDING**

A vendor of food and beverages shall comply with the inspection provisions and standards for restaurants contained in the Ordinances of the City of Portsmouth.

- A. The equipment used in vending food and beverages shall not be used until the vendor receives a certificate of inspection indicating compliance with this section.
- B. Each food and beverage vending business shall be inspected at least quarterly by the Health Officer.

### **Section 6.1310: ADVERTISING**

A peddler shall not permit advertising on any stand or motor vehicle, except to identify the name of the product or the name of the vendor and the posting of prices.

### **Section 6.1311: MOTORIZED FOOD VENDORS IDENTIFICATION**

All motorized food vendors operating in the City of Portsmouth are required to have lettering on both sides and rear of their vehicle(s), identifying the name of the business. The letters shall be at least four inches (4") in height and of such color and design as to be clearly visible at a distance of at least fifty (50) feet. The letters shall be of a material and affixed in a manner approved by the Licensing Officer.

### **Section 6.1312: RENEWAL**

An application to renew a license shall be made not later than thirty (30) days before the expiration of the current license in accordance with Section 6.1304.

### **Section 6.1313: TEMPORARY SUSPENSION FOR STREET CLOSINGS**

An official temporary encumbrance or closure of a street or sidewalk by the City for purposes of maintenance or reconstruction shall cause the suspension of all licenses to operate thereon.

#### **Section 6.1314: STREET FAIRS**

Any person or persons wishing to use or occupy a portion of any street or sidewalk for the purposes of conducting thereon street fairs or other community events, including but not limited to the sale of merchandise by commercial retailers, or by community associations conducting street fairs or other promotions must, pursuant to the provisions of RSA 31:100, obtain a license from City Council.

#### **Section 6.1315: PUBLIC CELEBRATIONS**

The Licensing Officer may, under conditions deemed appropriate by him, grant a temporary vendor's license to operate during public celebrations.

#### **Section 6.1316: LICENSE FEES**

The license required by this Article shall be issued upon approval by the Licensing Officer. Fee to be determined in accordance Chapter 1, Article XVI or similar wording. The fee is for one (1) year or any part thereof. (Amended 6/21/99) (Amended 3/18/2002).

#### **Section 6.1317: LICENSE SUSPENSION OR REVOCATION AND HEARING**

Upon written notice to the licensee, the license issued hereunder may be suspended for the remainder of its term, or any portion thereof, by the City Manager upon a finding that any of the terms and conditions of this Article have been knowingly violated by the licensee.

At the request of any licensee receiving notice of suspension or revocation pursuant to this section, the Chairperson of the Vendor's Committee shall arrange a hearing of the Vendor's Committee. Such hearing shall be scheduled during normal business hours of City Hall within seven (7) calendar days of the receipt by the Chairperson of the request for such hearing, Saturdays, Sundays and holidays excluded. The Chairperson of the Vendor's Committee shall conduct and preside over all hearings scheduled under this section. The hearings shall be informal and the rules of evidence shall not apply. At such hearings the licensee may present any defense of law or fact which is relevant to the issue of whether or not the license should be suspended or revoked. The decision of the Vendor's Committee shall be final, subject only to judicial review. No licensee whose license has been suspended or revoked shall be granted another license during the period of suspension or revocation. (Amended 12/02/02)

#### **Section 6.1318: PENALTIES**

Any person, firm, or corporation who violates any provision of this Article shall be subject upon conviction of a fine of up to Five Hundred (\$500.00) Dollars per violation.

## **ARTICLE XIV: PAWN BROKERS**

### **Section 6.1401: LICENSE**

No person shall be engaged as a pawn broker in this City without first obtaining a license for that purpose from the City License Officer and endorsed by the Chief of Police. Each license shall be in writing and shall specify the place, street and number of the street where said business is to be conducted.

### **Section 6.1402: FEE**

Each applicant for such license shall annually, April 1st, pay to the City a fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 4/1/96) (Amended 3/18/2002).

### **Section 6.1403: PENALTY**

Any person violating the provisions of this Ordinance shall be fined not less than \$1.00 nor more than \$100.00 for each offense.

### **Section 6.1404: PROVISIONAL ORDER**

When an Inspector has reported the violation of this Ordinance or of any law or ordinance, the City License Officer shall issue to the affected person a provisional order to comply:

- A. Nature of Notice: The provisional order, and all other notices issued on compliance with this Ordinance, shall be in writing, shall be personally served, and shall apprise the person affected of his specific violations. In the absence of the person affected or his agent or employee, a copy of such notice shall be affixed to some structure on the premises. Depositing such notice in the United States mail shall constitute service thereof.
- B. Period of Compliance: The provisional order shall require compliance within fifteen days of personal service on the affected person.
- C. Hearing: Upon written application by the person affected before the expiration of the fifteen days period for compliance, the City License Officer shall order a hearing. Notice of such hearing shall be given the affected person in the manner prescribed herein.
- D. Modifying Authority of License Officer: Upon written application, or on his own motion, the City License Officer shall have the authority, in a proper case, to extend the time for compliance, to grant a new license date, and to change, modify or rescind any recommendation or order.
- E. Final Order: Upon the failure or refusal of the violator to comply with the provisions of the order or with any order made after hearing, the City License Officer shall then declare and make the provisional order final.

1. Authority of License Officer: The License Officer shall have the authority to suspend or revoke licenses upon making and declaring a provisional order final.
  2. Effect of Revocation or Suspension: Upon revocation or suspension, no refund of any portion of the license fee shall be made to the licensee and he shall immediately cease all business at all places under such license.
- F. Summary Action: When the conduct of any licensee, agent or employee is so inimicable to the public health, safety and general welfare as to constitute a nuisance and thus give rise to an emergency, the License Officer shall have the authority to order the cessation of business and the close of premises or to suspend or revoke the license.
1. Special Hearing: Unless waived in writing within five days after he has acted summarily, the License Officer shall conduct a special hearing for such action in respect to the summary order as may be therein determined. Notice of such hearing shall be given the affected person in the manner prescribed herein.
- G. Right of Appeal: Any person aggrieved by any decision of the License Officer after hearing shall have the right to appeal to the City Council by filing a written appeal with said City Council within thirty days following the effective date of the action or decision complained of:
1. Contents of Appeal: Such appeal shall set out a copy of the order or decision appealed from and shall include a statement of the facts relied upon to avoid such order.
  2. Notification of License Officer: At the time of filing any such appeal of copy thereof shall be filed by the appellant with the License Officer.
  3. Hearings: The City Council shall fix a time and place for hearing the appeal and shall personally serve a written notice, as provided herein, upon the appellant informing him thereof. The City Council shall also give such notice to the License Officer and such officer shall be entitled to appear and defend such order.
  4. Effect of Decision: The findings of the City Council shall be final and exclusive and shall be personally served upon the appellant as required herein.
- H. Liability of Violation
1. Unpaid Fee Constitutes Debt: The amount of any unpaid fee, the payment of which is required herein, shall constitute a debt due to the City.
  2. Action by the City Attorney: The City Attorney shall, at the direction of the License Officer, institute Civil Suit in the name of the City to recover any such unpaid fee.
  3. Civil Judgment No Bar: No civil judgment or any act by the City Attorney or the License Officer on the violation shall bar or prevent a criminal prosecution for each and every violation of the Ordinance.

## **ARTICLE XV: ROLLER SKATING RINK**

### **Section 6.1501: LICENSE REQUIRED**

No person shall operate, keep, maintain, or continue any roller skating rink in the City of Portsmouth for public use unless the City License Officer shall have granted a license therefor and said license is endorsed by the Chief of Police and Fire Chief.

### **Section 6.1502: FEE**

Fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).

### **Section 6.1503: TERM**

Such license shall be valid for the period of one year from the date of issuance.

### **Section 6.1504: HOURS**

The hours of operation for such licensed places shall be as follows:

- A. Any person who keeps a roller skating rink as aforesaid or has the care or control thereof shall not allow or permit the same to be kept open or used between the hours of 1:00 a.m. and 7:00 a.m.
- B. Any person who keeps a roller skating rink as aforesaid or has the care or control thereof shall not allow or permit the same to be kept open or used before the hour of 1:00 p.m. on Sunday.
- C. The Chief of Police may extend the hours on special occasions with his written permission.

### **Section 6.1505: PENALTY**

Any person violating the provisions of this Ordinance shall be fined not more than \$100.00 for each offense.

## **ARTICLE XVI: MAGAZINE SUBSCRIPTION SOLICITORS**

That is shall be unlawful for any solicitor as defined in Section 6.1601 to engage in such business within the City of Portsmouth when the subject of the sale is any of the articles specified in Section 6.1602 without first obtaining a license therefor in compliance with this Ordinance.

### **Section 6.1601: DEFINITIONS**

For the purposes of this Ordinance, a solicitor is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the City or not, who takes or attempts to take orders, goods, wares, merchandise or personal property of any nature for future delivery, whether or not such person has a sample of the goods, wares, merchandise or personal property, or whether he is collecting advance payments on such sales.

### **Section 6.1602: MAGAZINE SUBSCRIPTIONS**

Applicants for licenses under this Ordinance must file with the City Clerk a sworn application in writing on a form furnished by the Clerk which shall give the following information:

- A. The name or names of the person/persons having the management of applicant's business during that time that it is proposed that it will be carried on in the City. If the applicant is an employer, the name, description and address of each employee together with a photograph of each employee shall accompany the application;
- B. Permanent home address and full local address of applicant;
- C. A brief description of the nature of the business and the goods to be sold;
- D. If the applicant is an employee, the name and address of the employer together with evidence sufficient to establish the nature of the relationship and a photograph of the applicant.

### **Section 6.1603: INVESTIGATION AND ISSUANCE OF LICENSE**

Upon receipt of an application, the City Clerk shall cause a copy thereof to be sent to the Chief of Police who shall investigate the truth of the facts stated in the application. No license shall be issued on the day application is made and application shall be either granted or denied within ten days of the application date. If as a result of such investigation, the truth of the facts stated in the application is established, a license will be issued. Such license shall contain the following:

- |               |                       |
|---------------|-----------------------|
| A. Name       | D. Nature of Business |
| B. Address    | E. Expiration Date    |
| C. Photograph |                       |

**Section 6.1604: LICENSE FEE** [Added 04/16/2012]

The fee for such license shall be determined on an annual basis by the City during its budget process.

**Section 6.1605: RENEWAL**

Licenses shall expire one year after date of issuance.

**Section 6.1606: BADGES**

Licenses shall be displayed on the outer clothing of the solicitor when he is engaged in soliciting door to door or in any public place. A solicitor shall recite his license number upon the request of any citizen.

**Section 6.1607: REVOCATION OF LICENSES**

Permits and licenses issued pursuant to this Ordinance may be revoked by the City Clerk of the City of Portsmouth after notice and hearing for any of the following causes:

- A. Fraud, misrepresentation or false statement contained in the application for license;
- B. Fraud, misrepresentation or false statement made in the course of carrying on his business as a solicitor;
- C. Any violation of this Ordinance;
- D. Conviction of any crime involving fraud, misrepresentation or violation of the Consumer Protection Laws of this State or of the United States.

Notice of hearing for revocation of license shall be given by registered mail, postage to the local address appearing on the application. Notice shall be mailed seven days prior to the date set for the hearing. Any person aggrieved by the action of the City Clerk in refusing to issue a license or in revoking a license may appeal to the City Council. Such appeal shall be taken by filing a written statement with the City Council within fourteen days of notice of the action complained of. The Council shall set a time and place for hearing the appeal and notify the applicant of the date in the same manner as notice of revocation hearing is given.

**Section 6.1608: PENALTY**

Any person violating any of the provisions of this Ordinance shall be guilty of a violation.

## **ARTICLE XVII- OUTDOOR DINING ENCUMBRANCE PERMIT**

### **Section 6.1701: STATEMENT OF PURPOSE**

The City Council determines that it is a lawful purpose to temporarily encumber sidewalks, loading zones and parking spaces for outdoor dining through the City's issuance of an Outdoor Dining Encumbrance Permit, which will balance the shared use of the public realm by city residents, visitors, restaurant owners and other downtown businesses. The Council encourages outdoor dining under the conditions set forth in this ordinance because it enhances the economic vitality of the City, will ensure Americans with Disabilities Act ("ADA") accessibility and preserve access to downtown businesses while maintaining the safe flow of vehicular and pedestrian traffic. This permit does not limit or impact the availability of other permits and licenses.

### **Section 6.1702: TERM**

Outdoor Dining Encumbrance Permits will be issued annually for a term beginning May 1<sup>st</sup> through the day after Indigenous Peoples' Day.

### **Section 6.1703: FEE**

The Fee Schedule Study Committee shall establish the annual fee for Outdoor Dining Encumbrance Permits based on the Economic Development Commission's fee considerations for the first year of the effective date of the ordinance. For each successive year, the Outdoor Dining Encumbrance Permit fee shall be established in accordance with Chapter 1, Article XVI, relative to the adoption of fees by City Council budget resolution.

### **Section 6.1704: AUTHORIZED LOCATIONS FOR OUTDOOR DINING**

Outdoor dining is permitted on city sidewalk(s), parking spaces and loading zones. Outdoor Dining is prohibited on all city streets, except on streets if traffic is less than 1,000 vehicles a day, and the design and location is approved by City Staff, including the Fire Department, for public safety.

### **Section 6.1705: PERMIT APPLICATION PROCESS**

The City Manager or their designee will create online forms for the Outdoor Dining Encumbrance Permit. The Content of the Application shall include, but not be limited to, the following:

A. Applicant, Owner and Abutter Information, which shall include:

1. The name and contact information for the representative of the Applicant (food establishment entity ("Entity"));
2. City Tax Map and Lot and name of Owner of building where Entity is located; and
3. If any portion of the outdoor dining area is in front of an abutter's property, the City Tax Map and Lot of the abutting building(s), name of Owner and a statement of permission from first floor occupants of abutting building(s).



B. Plan: Every Application will include a Plan, created by Applicant with assistance from City Staff, with sufficient detail that shall include the following:

1. Location:

The Plan will show that the outdoor dining area is in a permitted location.

2. Existing Conditions:

The Plan shall include the existing conditions of the public infrastructure in the encumbered area, which includes but is not limited to, curb lines, light poles, signpost, bike racks, street trees, tree grates, manhole covers, meters, sidewalk curb cuts, fire hydrants, Fire Department connections and proximity in feet to crosswalks and intersections, if applicable. City Staff will work with Applicant to identify existing conditions on the Plan.

3. Layout and Compliance with Design Standards:

The Plan shall also show ingress and egress to the encumbered area and the layout of all objects in the encumbered area, including the dimensions and materials of tables and chairs, lighting and power sources, heaters, stands, A-frame signs, parklets, barriers and planters. The layout will comply with Design Standards recommended by the Economic Development Commission, which will be reviewed and approved along with this ordinance, and as further amended by the City Council.

C. Compliance:

Prior to issuance of permit, Applicant will acknowledge receipt of and compliance with the Design Standards. Applicant shall also provide confirmation that it has the permission from the New Hampshire State Liquor Commission to serve alcohol in the outdoor dining encumbrance area, if applicable, and will comply with all state statutes, rules and regulations of the New Hampshire State Liquor Commission and all other City ordinances, rules and regulations.

## **Section 6.1706 DUTIES OF APPLICANT UPON ISSUANCE OF PERMIT**

Every Applicant that is issued an Outdoor Dining Encumbrance Permit shall:

- A. Agree to permit the City to conduct all reasonable inspections of the outdoor dining encumbrance area;
- B. Comply with all applicable governing laws, Codes, City ordinances, state statutes, Design Standards and City rules, regulations and policies;
- C. Maintain and install all infrastructure in the encumbered area in a safe, clean and appropriate manner and take all action necessary to protect the public safety;

- D. Refrain from damaging the encumbered area and to restore it to its original condition upon termination of the permit;
- E. Refrain from operating outdoor dining after expiration of the permit or at any time during periods of revocation or suspension;
- F. Remove all Applicant's property from the encumbered area by the day after Indigenous Peoples' Day or within 24 hours after the encumbered area is no longer used for outdoor dining. If Applicant fails to remove its property from the encumbered area, the City will remove and store the property for 48 hours. The Applicant will be assessed a \$250 removal and storage fee. If the removal and storage fee is not paid or the property is not retrieved by the Applicant before the expiration of the 48-hour storage period, the Applicant will forfeit ownership of the property to the City; and
- G. Comply with all terms, conditions and other additional requirements set forth in the permit, including but not limited to an agreement to indemnify the City and to name the City as an additional insured in an amount prescribed in the permit and payment of permit fee.

#### **Section 6.1707            DENIAL, SUSPENSION, REVOCATION AND PENALTIES**

##### **A. Denial and Temporary Suspension:**

The City may deny or temporarily suspend the Outdoor Dining Encumbrance Permit if it would interfere with special events or for any maintenance or construction which requires closure of streets, sidewalks, loading zones or parking spaces.

##### **B. Suspension and Revocation:**

The Outdoor Dining Encumbrance Permit will be suspended or revoked for breach of the terms and conditions of the permit and for failure to comply with this ordinance. The permit will be suspended 48 hours after receipt of written notice from the City. No 48 hours is required if it is an emergency.

##### **C. Penalties:**

If the Applicant violates the provisions of this ordinance, it shall be subject to all penalties set forth in City Ordinance, Chapter 1, Article XIII and all other additional remedies permitted by law.