

ORDINANCE NO. 1182

AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO, REVISING SECTION 13.15 OF THE BERTHOUD MUNICIPAL CODE

WHEREAS, the Town Board for the Town of Berthoud (the "Town") recently enacted a vendor licensing ordinance for the Town which is located at Section 13.15 of the Town of Berthoud Code; and

WHEREAS, since enacting the vendor licensing ordinance the Town has identified several areas of the ordinance that it believes could be improved upon; and

WHEREAS, the Town Board, in order to better meet the needs of local businesses and the residents of the Town, desires to modify Section 13.15 of the Berthoud Municipal Code;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO THAT SECTION 13.15 OF THE BERTHOUD MUNICIPAL CODE IS HERBY REPEALED, AND THE REVISED SECTION 13.15 IS ENACTED AND ADOPTED AS SET FORTH BELOW:

13.15 Vendor Licensing

13.15-1 Definitions

The following words, terms and phrases, when used in this Section 13.15, shall have the meanings ascribed below:

Block face shall mean the portion of a street between two (2) intersections, including all on-street parking within such boundaries.

Commissary shall mean a commissary that is approved as such under the laws and regulations of the State and County that govern retail food establishments.

Commissary-prepared shall mean prepared, cooked and assembled in a commissary, without further preparation, cooking or assembly after leaving said commissary.

Food shall mean a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

Licensee shall mean a person who has been issued a license under the provisions of this Section.

Mobile food truck shall mean a motorized wheeled vehicle or towed wheeled vehicle designed and equipped to serve food. *Mobile food truck* shall include both "hot trucks," upon which food is cooked and prepared for vending, and "cold trucks," from which only commissary-prepared, ready-to-eat or packaged foods in individual servings are handled.

Mobile food truck vendor shall mean an outdoor vendor who operates from a mobile food truck.

Neighborhood mobile food vendor shall mean an outdoor vendor operating in locations on streets that are in neighborhood zone districts from a mobile food truck or pushcart licensed for use in the retail sale or service of only commissary-prepared, ready-to-eat or packaged food in individual servings. *Neighborhood mobile food vendor* shall not include a vendor operating from a mobile food truck or pushcart on which food is cooked.

Outdoor vendor shall mean any person, whether as owner, agent, consignee or employee, who sells or attempts to sell, or who offers to the public free of charge, any services, goods, wares or merchandise, including, but not limited to, food or beverage, from any outdoor location, except that *outdoor vendor* shall not include a person who:

- a. Vends from private premises where the same or similar services or goods are also offered on a regular basis from an indoor location on such premises;
- b. Vends from a public sidewalk pursuant to a Town encroachment permit if the person vending also vends the same or similar services or goods on a regular basis from an indoor location on premises immediately adjacent to such location;
- c. Vends by or on behalf of the Town or at an outdoor event sponsored by the Town;
- d. Vends from property owned by the Town, if such vending is pursuant to a concession agreement or other agreement with the Town;
- e. Vends at a yard sale, lemonade stand, Girl Scout cookie sale, or similar event which does not occur on a regular basis;
- f. Vends outdoor transportation services as a public utility under a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission; or
- g. Vends food or catering services at an individual private residence for a private event.

Outdoor vendor of miscellaneous goods and services shall mean an outdoor vendor who offers miscellaneous goods or services to the public on private property. *Outdoor vendor of miscellaneous goods and services* shall include, but not be limited to, Christmas tree lots, pumpkin patches and other temporary outdoor holiday sales; vehicle windshield chip repair; temporary car wash events; and temporary nonprofit fundraising sales.

Outdoor vendor of transportation services shall mean an outdoor vendor (not regulated by the Colorado Public Utilities Commission) who offers transportation services to the public. *Outdoor vendor of transportation services* shall include, but not be limited to, vendors of valet parking services; transportation services by pedal power such as pedi-cab or conference bicycle services; horse-drawn carriage rides; or other means of transportation service offered for hire.

Packaged shall mean bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. *Packaged* shall not include a product in a wrapper, carry-out box or other nondurable container used to protect food during the service and receipt of the food by the consumer.

Private shall mean any location that is not a public right-of-way or public street, alley or sidewalk.

Pushcart shall mean a mobile vending cart, pushcart or trailer that is not motorized or attached to a vehicle for towing and that does not exceed ten (10) feet in length (excluding the length of the trailer hitch, if any), four (4) feet in width or eight (8) feet in height. A *pushcart* may be used to cook and prepare food for vending or to serve commissary prepared, ready-to-eat or packaged food in individual servings.

Pushcart vendor shall mean an outdoor vendor operating from a pushcart.

Ready-to-eat food shall mean food that is edible and that is in the form in which it is reasonably expected to be consumed without further washing, cooking or additional preparation.

Town Administrator shall mean the Town Administrator of the Town of Berthoud, the Town Planner, the Town Clerk, or any employee of the Town designated by any of the foregoing persons.

Vend or *vending* shall mean the sale, attempt to sell or offering to the public of any services, goods, wares or merchandise.

Yard sale shall mean the offering of goods for sale for no longer than a period of three (3) consecutive days, from an informal stand or display on an individual residential lot in a residential zone district by or on behalf of the owner or resident of the lot, provided that such owner or resident is not in the business of selling at retail or wholesale the goods offered at the yard sale. *Yard sale* shall include, but not be limited to, yard sales, garage sales, lemonade stands and bake sales.

13.15-2 License Required

It shall be unlawful for any outdoor vendor to engage in such business within the Town without first obtaining a license in compliance with the provisions of this Section. The requirements of this Section shall not apply to yard sales or to vendors at Town licensed special events, including Berthoud Day and approved Farmer's Market events.

- A. The number and type of outdoor vendors to be allowed as part of a licensed event shall be determined by the Town Administrator based on the specific circumstances of the proposed event, including, but not limited to, the location of the event, the size of the lot where the event is held, the types of surrounding land uses and their proximity to the event, and any other potential impacts on public health, safety and welfare that the proposed event may have.
- B. The application fee to be paid to the Town for the issuance, modification or renewal of any license pursuant to this Section shall be fifty dollars (\$50) per year.

13.15-3 Application for License; License Modifications

- A. An application for a license under this Section shall be submitted to the Town Administrator no less than five (5) working days prior to the first day of proposed operation.
- B. A license shall be issued under this Section for each calendar year.
- C. A request for a modification of a license to add new vehicles, operations or locations or to modify other license restrictions or conditions, as applicable, shall be submitted to the Town Administrator and shall meet all of the requirements and be reviewed in the same manner as an application for a license hereunder. The term of a license may not be modified to extend beyond the originally applicable period.

13.15-4 Contents of Application

- A. The application shall contain the following information:
 1. Name, address and telephone number of the applicant and, if other than the applicant, name, address and telephone number of the person managing or supervising the applicant's business during the proposed period of operation; and, if a corporation, the state under which it is incorporated and appropriate evidence of good standing to do business in the State;
 2. Type of operation to be conducted, including the particular type of service, goods, wares or merchandise to be sold;
 3. A description of the design of any vehicle, pushcart, kiosk, table, chair, stand, box, container or other structure or display device to be used in the operation by the applicant, including the size and color, and the license plate and registration information for any vehicle to be used. Applicants are encouraged, but not required, to submit a photograph of the device to be used in the operation of the applicant when possible;
 4. The proposed period of operation;
 5. The proposed hours and days of operation;
 6. Each location on or abutting commercial private property for which the application is made;
 7. Written consent of the property owner if the location for which the application is made is on private property or abuts a privately owned business;
 8. Proof of liability insurance as required by Subsection 13.15-7(E) of this Section;
 9. A plan of each location on private property for which the application is made, showing the location of existing and proposed structures, access, equipment and parking;
 10. Documentation of a sales and use tax license in good standing issued by the Colorado Department of Revenue, the County and the Town; and
 11. For the vending of food, documentation of regulatory approval as a retail food establishment by the County and State.
- B. The Town Administrator or his designee may request and require such additional information as he or she deems necessary in order to consider the application and make the required determinations as set forth in this Section. The time frame for review of any application shall be suspended during the pendency of any such request for additional information.

13.15-5 Review and Approval

A. Applications shall be considered individually and in chronological order as established by the date of receipt of a properly completed application. However, no application will be accepted for review more than sixty (60) days prior to the proposed period of operation. Within five (5) working days of the filing of an application the Town Administrator or his designee shall review such application and shall make a determination as to whether the application contains the required information and, if so, whether the issuance of a license is consistent with the requirements of this Section and compatible with the public interest. In making such determination, the Town Administrator or his designee shall consider the following factors and may consider other factors the Town Administrator or his designee considers necessary to protect the health, safety and welfare of the public:

1. The degree of congestion of any public right-of-way that may result from the proposed use and the design and location of any operating locations on private property, including the probable impact of the proposed use on the safe flow of vehicular and pedestrian traffic. Factors to be considered shall include but not be limited to, the width of streets and sidewalks, the volume of traffic and the availability of off-street parking;
2. The proximity, size, design and location of existing street fixtures and furniture at or near the specified locations, including, but not limited to, sign posts, lamp posts, bus stops, benches, telephone booths, planters and newspaper vending devices;
3. The probable impact of the proposed use on the maintenance, care and security of the specified location;
4. The recommendations of the Policy, Planning and Transportation Services Director and the Community and Operations Services, insofar as the specified locations may affect the operation of those service areas, based upon the factors recited herein; and
5. The level and types of outdoor vendor activity already licensed for the specific locations proposed in the application, and the impacts that the issuance of a license may have on surrounding properties.
 - a. The Town Administrator or his designee shall also obtain the determination of the Zoning Administrator as to whether the proposed use conforms to the requirements of the Land Use Code as applied to any specified location. If the Zoning Administrator determines the proposed use is not in compliance with the requirements of the Land Use Code, the application shall not be approved.
 - b. If the Town Administrator or his designee determines that the issuance of a requested outdoor vendor license would be consistent with the requirements of this Section, with or without additional conditions, the Town Administrator or his designee shall issue the license, subject to any such conditions. If the Town Administrator or his designee determines that the issuance of an outdoor vendor license would not be consistent with the requirements of this Section, the Town Administrator or his designee shall notify the applicant of his or her determination in writing, with an explanation of the reasons for such denial.

13.15-6 Requirements for Issuance

A. Each license shall be valid only for any location in the Town which meets all criteria of this Section and is not occupied by another vendor.

B. In addition to the licensee's name, address and telephone number, the license shall contain the following:

1. The type of operation;
2. The period of time for which the license was issued;
3. The hours and days of operation;
4. The areas within the Town where licensee intends to operate, including specified types of public rights-of-way, as applicable;
5. A brief description of any vehicle, cart, kiosk, table, chair, stand, box, container or other structure or display device to be utilized by the licensee;
6. Any special terms and conditions of issuance;

7. A statement that the license is personal and is not transferable in any manner;
8. A statement that the license is subject to the provisions of this Section.

13.15-7 Restrictions and Operation

- A. No licensee may use, for the purpose of on-site storage, display or sale, any vehicle, cart, kiosk, table, chair, stand, box, container or other structure or display device not described on the face of the license.
- B. No licensee may connect to public utilities.
- C. No such vehicle, structure or device referred to in Subsection (A) above shall be located:
 1. In any on-street parking space that is not parallel to the adjacent street;
 2. In any public park;
 3. In any public parking space in a manner that does not comply with applicable parking regulations or a properly issued parking permit for the use of said parking space;
 4. Upon a public sidewalk within the extended boundaries of a crosswalk;
 5. Within ten (10) feet of the extension of any building entranceway, doorway or driveway;
 6. Upon a public right-of-way, or public street, alley or sidewalk within a Town park or other Town facility (except as a concessionaire or pursuant to a permit issued for operation in a park or recreation area or on a trail, or for operation at another Town facility pursuant to a facility-specific permit issued by the Town); or
 7. In any location in which the vehicle, structure or device may impede or interfere with or visually obstruct:
 - a. The safe movement of vehicular and pedestrian traffic;
 - b. Parking lot circulation; or
 - c. Access to any public street, alley or sidewalk.
- D. No licensee shall operate during the hours of 12:00 a.m. to 7:00 a.m.
- E. Each licensee who, during the course of its licensed activities, operates within or enters upon a public right-of-way or publicly owned property shall maintain liability insurance, which shall name the Town as an additional insured party, in an amount to be determined by the Town Administrator with proof of the same to be presented at the time of submission of the application and posted at all times with the license required by this Section at the vending site. Any licensee who fails to provide proof of such insurance shall be prohibited from operating within or entering upon such property.
- F. Each licensee shall pick up and dispose of any paper, cardboard, wood or plastic containers, wrappers or any litter which is deposited within twenty-five (25) feet of the designated location or within twenty-five (25) feet of the point of any sale or transaction made by the licensee if the radius of the designated location exceeds twenty-five (25) feet. The licensee shall carry a suitable container for the placement of such litter by customers or other persons.
- G. Each licensee that operates in front of or abutting a private business shall only be authorized to vend at such location with the written permission of the business owner. Private businesses that authorize vendors to operate in front or abutting their business shall submit to the Town monthly schedules of vendors that it approves of operating in front of or abutting their business.
- H. Each licensee shall maintain in safe condition any vehicle, structure or device as described in Subsection (A) above, so as not to create an unreasonable risk of harm to the person or property of others, and shall use flashing lights and other similar warning and safety indicators when stopped to vend services in any location in a street right-of-way.
- I. No licensee shall leave unattended any vehicle, structure or device as described in Subsection (A) above, on a public right-of-way or at any licensed location, or place on public sidewalks or in public streets or alleys any structures, canopies, tables,

chairs or other furniture or equipment.

J. Notwithstanding the location, days and hours of operation listed on a licensee's license, no licensee shall operate at or abutting a Town sponsored or community special event, including but not limited to Berthoud Days, Oktoberfest, and the Farmers Market, without the express written consent of the sponsor of the special event.

K. Notwithstanding the location, days and hours of operation listed on a licensee's license, no licensee shall operate at or abutting a park during a time period in which the park is reserved for private use, without the express written consent of the private party that is reserving the park.

L. Each licensee shall prominently display the license issued hereunder in a location readily visible to the public on each vehicle, structure or device as described in Subsection (A) above.

M. Each licensee operating in an on-street location must serve the public only from the sidewalk and not from the street or adjacent parking spaces.

N. Each licensee shall comply with the provisions of all applicable ordinances of the Town as well as the requirements of all state and federal laws, including, but not limited to, Town noise restrictions, sign regulations, limitations on discharge of liquid waste, sales and use tax requirements and food safety and other related requirements established by State or County regulation.

O. No more than one (1) outdoor vendor of any specified type may operate at the same time on any lot, tract or parcel of land, except that this limitation shall not apply to special vending licenses and licenses for special events.

P. Each licensee shall have an affirmative and independent duty to determine the safety and suitability of any particular stopping point or location of operation, both in general and at any particular time and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including, but not limited to, potential and actual customers, pedestrians and other vendors or vehicles.

Q. The following additional requirements shall apply to particular types of outdoor vendor licensees, as specified:

1. Mobile food truck vendors shall:
 - a. Vend only on lots in non-neighborhood zone districts or on streets in locations in non-neighborhood zone districts where parallel parking is allowed;
 - b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
 - c. Vend only food and nonalcoholic beverages; and
 - d. Permanently affix or paint any signage on the mobile food truck, with no signs/banners in or alongside street right-of-way or across roadways.
2. Pushcart vendors shall:
 - a. Vend only on lots in non-neighborhood zone districts or on streets in locations in non-neighborhood zone districts where parallel parking is allowed;
 - b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
 - c. Vend only food and nonalcoholic beverages; and
 - d. Stop to vend only in locations that are no more than twelve (12) inches from a curb or edge of travel lane.
3. Neighborhood mobile food vendors shall:
 - a. Vend only on streets in locations in residential zoned districts where parallel parking is allowed;

- b. Not stop to vend within two hundred (200) feet of the property boundary of any public or private school for students within the grade range of kindergarten through twelfth (12th) grade;
- c. Vend only during the hours of 9:00 a.m to 10:00 p.m.;
- d. Vend only food and nonalcoholic beverages;
- e. Stop to vend only in locations that are no more than twelve (12) inches from a curb or edge of travel lane; and
- f. Not stop to vend for more than fifteen (15) minutes in any particular cul-de-sac, or on any particular block face.

- 4. Outdoor vendors of miscellaneous goods and services shall operate only in nonresidential zone districts.
- 5. Outdoor vendors of transportation services shall:
 - a. Operate in accordance with all vehicular traffic laws and regulations, including, but not limited to, equipment requirements such as front and back lights and side reflectors;
 - b. Limit stopping and standing in street rights-of-way or alleys so as to avoid delay or obstruction of traffic;
 - c. Stop to vend services only in locations that are no more than twelve (12) inches from a curb or edge of travel lane; and
 - d. Operate so as to avoid obstruction of pedestrian traffic and not on sidewalks.

13.15-8 Renewal

Renewal of a license shall be treated as a new application under the provisions of this Section. Any violation by the licensee of the provisions of this Section shall be an additional factor to be considered in the review and approval procedure described in Subsection 13.15-5.

13.15-9 Transfer of License or Location

If the licensee requests the transfer of a license to a new licensee or to a new location, such request shall be treated as a new application.

13.15-10 Restrictions Due to Changed Conditions

Any Code Enforcement or Police Officer may suspend the vending operation of any licensee or all licensees at any designated location if he or she determines that the licensed activity in that location will no longer meet the requirements of this Section due to construction activity or other changed conditions affecting public health, safety or welfare. In such event, such Officer shall provide written notice to the affected licensee or licensees, and the authorization to operate in such location shall not be reinstated until such time, if at all, as the licensed operations may be safely resumed in the judgment of the Town Administrator. Any such suspension shall not extend the term of the affected license or licenses.

13.15-11 Revocation or Nonrenewal

The Town Administrator may temporarily suspend, or permanently revoke and shall not renew, any license issued pursuant to this Section if the Town Administrator determines that any of the following have occurred:

- A. Fraud, material misrepresentation or false statement in the application for the license or any renewal application;
- B. Failure to obtain a sales and use tax license as required by the Town or to remit any sales tax due the Town;
- C. Failure to operate or supervise operations conducted under the license, so as to reasonably ensure that such operation is in compliance with the terms of the license, the provisions of this Section, and the Berthoud Municipal Code; or
- D. Authorizing, condoning or knowingly tolerating any unlawful vending operations or any operation conducted in such a manner as to constitute a menace to the health, safety or general welfare of the public.

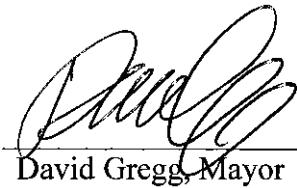
13.15-12 Violations and Penalties

In addition to the suspension, revocation or denial of any license issued hereunder, any person who violates the provisions of this Section may be punished by a fine in accordance with this Code.

PASSED, ADOPTED, SIGNED AND APPROVED this the 8th day of July, 2014.

TOWN OF BERTHOUD

By:



David Gregg, Mayor

ATTEST:

By:



Mary K. Cowdin, Town Clerk