

ARTICLE 4

Vending

Sec. 6-4-10. Purpose.

(1) All public rights-of-way within the Town's corporate limits are the property of the Town. They are administered for and utilized primarily for the benefit of the traveling public and franchised municipal utilities, and secondarily for commercial activities along the rights-of-way. The purpose of this Chapter is to regulate the location, time, manner and amount of vending activities on public and private property in such a manner as to protect the rights of the public, public property and the rights of private property owners to peace and tranquility in their residences.

(2) The intent of this Article is to allow limited commercial activity from small, nonpermanent, display apparatus which are compatible with the existing neighborhood. (Prior code 5.12.010; Ord. 1252 §1, 2006)

Sec. 6-4-20. Definitions.

As used in this Chapter, the following terms have the following meanings:

*Display apparatus* means a nonpermanent structure, table, wagon, tray or cart for the display and vending of goods, merchandise, food, wares or services.

*Extraordinary circumstances* means occasions that are not usual, expected, regular or of a customary nature.

*Long-term vending* means vending on private property for a term longer than that defined as *short-term vending*.

*Major festival event* shall be defined as in Section 11-4-10 of this Code.

*Nonprofit organizations* means those groups which have been granted a Section 501(C)3 or 503 tax exempt status by the Internal Revenue Service.

*Public property* means all real property owned, leased or managed by the Town, including but not limited to public rights-of-way, streets, sidewalks, parks and parking areas.

*Sale or sell* means the exchange of goods or services for money or other consideration, including the offering of goods or services for donation except when offered to express religious, social or political belief.

*Short-term vending* means vending on private property which occurs no earlier than the Thursday preceding a major festival event and ends the Monday following a major festival event.

*Vending activity* means the act of selling or offering for sale wares, goods, merchandise, food or services with or without a display apparatus, from a location outside of a building, and which activity is not an accessory use as defined by the Land Use Code.

*Vending Committee, Staff* means the Town Clerk and the Planning Director.

*Vending history* will be determined by reviewing the names on Town-approved applications.

*Vending Subcommittee, Council* means two (2) Town Councilpersons, assigned by the Town Council, and the Town Clerk.

*Yard sale* means the sale of personal goods occurring on public or private property. (Prior code 5.12.020; Ord. 1252 §1, 2006; Ord. 1288, 2008; Ord. 1308, 2009; Ord. 1386, 2013; Ord. 1416, 2014)

**Sec. 6-4-30. Activities allowed without a permit.**

The following activities are allowed without a permit, provided that the activity or use does not constitute a hazard to public health, safety, welfare and/or property or violate any other law of the Town. Nothing herein shall prohibit occasional ticket sales or fundraising without the use of a display apparatus by a nonprofit organization or any activity allowed under Chapter 11, Article 4 of this Code:

(1) Entertainment for which no fee is charged and which is not subject to regulation under Chapter 11, Article 4 of this Code.

(2) Free distribution of information, flyers, pamphlets, brochures or petitions.

(3) Display of advertising on a carried sandwich board.

(4) Individual or group yard sales of personal goods at any one (1) location not exceeding three (3) consecutive days in duration and totaling not more than eight (8) days per year.

(5) Sales by children under the age of fourteen (14) years of age with items for sale at a cost of a maximum of five dollars (\$5.00) an item.

(6) Use of the permanent table next to the kiosk on the corner of Colorado and Pine by nonprofit organizations.

(7) Activities or special events on public property formally authorized by the Town. (Prior code 5.12.030; Ord. 1252, 2006; Ord. 1386, 2013)

**Sec. 6-4-40. Vending on public property.**

(1) Rules.

(a) Permit required. It shall be unlawful for any person to engage in vending activity on public property without a permit or without compliance with the provisions of this Article.

(b) Application required. An application for a vending permit, including a scaled drawing of the proposed display apparatus and proposed signage, shall be submitted to the Town Clerk by published deadlines. Deadlines will be not less than two (2) months preceding the next season. The application shall be in a form prescribed by the Town Clerk and shall be for a specific vending site. Application for multiple sites is allowed but is only granted at the discretion of the Vending Subcommittee. Any application for multiple sites should prioritize the wishes of the applicant. The Town Clerk shall forward applications to the Vending Subcommittee in a timely manner, after determining that the application, including fees and evidence of insurance, is complete. The Vending Subcommittee shall approve or disapprove all applications prior to the commencement of vending activity.

(c) Indemnification and liability insurance required. As a permit condition, persons engaging in vending activity shall agree to indemnify and hold harmless the Town, its officers, employees and agents against any and all claims for damage to persons or property arising out of or resulting from the permittee's actions or omissions in the permitted use. Vendors shall also maintain comprehensive general public liability and property damage insurance in amounts no less than one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per incident. Insurance policies shall name the Town, its officers, employees and agents as additional insureds and shall provide that the insurance is primary and that no other insurance maintained by the Town will be called upon to contribute to a loss covered by the policy. The policy shall further provide written notice to the Town prior to cancellation or material change. Evidence of such insurance is required prior to permit issuance.

(d) Other licenses required.

i. Applicants shall obtain all required permits or licenses from all applicable governmental entities before a vending permit is issued, including but not limited to a Colorado sales tax license, a Town business

license Town sales tax license, Town excise tax license and, if the vending activity includes any food product, written approval from the San Miguel County Environmental Health Department. Vendors must be current with the Colorado and Town sales taxes and Town excise tax prior to the issuance of a permit. Thereafter, timely payment of taxes is required to maintain a permit.

ii. The vendor shall prominently display all required permits and licenses on the vending apparatus or, if no such apparatus is used, shall make such permits available upon reasonable request by any member of the public or official of the Town.

(e) Nontransferable. The vending permit is not transferable or assignable.

(f) Noninterference. No person engaged in vending activity shall make any unnecessary sounds or noise, obstruct any sidewalk or other public property, disturb or impede other persons or otherwise author any public nuisance. The use of radios, stereos and tape decks in connection with any vending activity is prohibited.

(g) Display apparatus.

i. Display apparatus, if used, must be no larger than three (3) feet in width, five (5) feet in length and seven (7) feet in height, excluding umbrellas and other similar devices. The use of tents is prohibited. All accoutrements must be contained in a 5' x 8' area. Accoutrements must be necessary to the business.

ii. All display apparatus shall be removed from public property at the end of each working day except in extraordinary circumstances and with prior written notification to the Town. Dogs may not be hitched to the display apparatus.

iii. Signage shall be painted on or attached to the display apparatus, and a drawing to scale of the proposed signage shall be included in the application. Signs

on display apparatus shall not exceed coverage of fifty percent (50%) of the front of the apparatus and fifty percent (50%) of each side of the apparatus and shall not appear on umbrellas or other similar devices that extend above the display apparatus.

iv. The use of gas powered generators is prohibited. Noiseless alternative energy generators will be considered.

(h) Area maintenance.

i. A vendor shall maintain both the permitted area, the immediate area surrounding the permitted area and the display apparatus in a neat, clean and hazard-free condition. Applicants must provide a written plan for disposal of trash generated by the business or pay, in advance, a Town trash fee of forty dollars (\$40.00) per month for pick-up of trash from nearby public containers.

ii. Spruce Street vendors are reminded that the mall is multi-use and must be available for general public use. Public picnic tables and public benches may not be used as display apparatus.

The North Spruce Street Mall area is available for vending activities providing that the maximum footprint for vending is limited to no more than 250 square feet including all tables, boxes, displays, etc. The vending area is to be set back at least fifteen feet (15') from the Colorado Avenue sidewalk, five feet (5') from the sidewalk east of the park, and shall not extend beyond the tree line to the west. Applications must include a scaled diagram of how the space is to be used and vendors must set up pursuant to the submitted and approved diagram. Spruce Street vendors are allowed one 8' x 8' "EZ UP" type awning to protect produce from the sun.

(i) Fees. The required application fee shall be submitted with the application. All permit fees shall be paid before commencement of the vending activity.

(j) Choice of vendors. Sites will be approved and assigned by the Vending Subcommittee. The Vending Subcommittee shall consider the following factors when deciding which applicant shall be issued a permit.

i. Diversity (in Town and by vendors) of offered food, goods, wares, merchandise or services;

ii. The number of continuous summer and/or winter seasons the applicant has lawfully vended on public property in the Town;

iii. Appearance, quality, safety and attractiveness of the display;

iv. Compliance and performance review; and

v. Number of seasons that applications have been submitted but not granted.

(k) Abandon/surrender.

i. During Summer Season (May 15 to October 14), a vendor who does not participate in a vending activity for four (4) out of seven (7) days (Sunday to Saturday), weather permitting, without prior written notification to the Town Clerk of extraordinary circumstances, will be considered to have surrendered and abandoned his or her permit, except that vendors are allowed fourteen (14) vacation days to be taken at the vendor's discretion.

ii. From December 20 to the day following official closure of the ski area, a vendor who does not participate in vending activity for two (2) out of seven (7) days (Sunday to Saturday), weather permitting, without prior written notification to the Town Clerk of extraordinary circumstances, will be considered to have surrendered and abandoned his or her permit, except that vendors are allowed five (5) vacation days to be taken at the vendor's discretion.

iii. From October 15 to December 19 and from the day following official closure

of the ski area to May 14, vendors have no minimum days of mandatory activity

iv. A vendor, after receiving a permit, may begin to vend earlier than the season start time if a site is vacant.

v. When a space has been abandoned, the Town shall have the right to reassign vacated spaces to another applicant. The Town Clerk reserves the right not to authorize an absence where extraordinary circumstances have not been demonstrated.

(l) Modifications. The Town Clerk may approve insubstantial modifications to this Section as long as the intent of this Article is met. The Town Clerk may adopt additional rules and regulations for administering all permits, and all applicants shall comply with said requirements. Vendors will be notified in writing of changes to rules and regulations prior to implementation.

(2) Vending areas, allowed uses, application fees and permit fees. The Town occasionally authorizes activities or special events that may impact specific sites. Vendors will be notified prior to events and alternative sites will be offered by the Town to vendors during these events/activities.

(a) Oak Street Mall area (North Oak Street/Elks Park):

i. Permits allowed: four (4).

ii. Application fee: forty dollars (\$40.00), nonrefundable. Late applications incur an additional fee of forty dollars (\$40.00).

iii. Allowed use: sale of wares, goods, merchandise or food from a display apparatus.

iv. Location: assigned sites (four [4]) on Colorado Avenue at Oak Street.

v. Permit fees:

1. Summer season, May 15 through October 14: five hundred dollars (\$500.00).

2. Winter season, October 15 through May 14: two hundred fifty dollars (\$250.00).

(b) Oak Street/San Juan/Gondola area:

i. Permits allowed: one (1).

ii. Application fee: forty dollars (\$40.00), nonrefundable. Late applications incur an additional fee of forty dollars (\$40.00).

iii. Allowed use: sale of wares, goods, services, merchandise or food from a display apparatus.

iv. Location: assigned site on Town property.

v. Permit fees:

1. Summer season, May 15 through October 14: five hundred dollars (\$500.00).

2. Winter season, October 15 through May 14: two hundred fifty (\$250.00)

(c) Spruce Street Mall area:

i. Permits allowed: Three (3). There shall be no simultaneous vending by vendors. Each vendor is limited to operating one (1) day per week. Vendors shall be ranked, as criteria for assignment of days, by seniority and a lack of negative reports.

ii. Application fee: forty dollars (\$40.00) nonrefundable. Late applications incur a late fee of forty dollars (\$40.00).

iii. Allowed use: sale of fruits, vegetables, nonalcoholic beverages and flowers.

iv. Location: North Spruce Street Mall.

v. Permit fees: June 15 through October 31, two hundred dollars (\$200.00).

(d) Town park areas: No vending activity shall occur in Town park areas except during a major or minor festival event as defined by Chapter 11, Article 4 of this Code in accordance with any such festival event permit, during a special event on the CCAASE calendar, or except as may be permitted by the Recreation Director.

(e) Payment rates for all areas may be changed by resolution of the Town Council. (Prior code 5.12.040; Ord. 1252 §1, 2006; Ord. 1288, 2008; Ord. 1308, 2009; Ord. 1386, 2013; Ord. 1401, 2013)

**Sec. 6-4-50. Vending on private property.**

(1) Permit and owner authorization required. It is unlawful for any person to engage in vending activity on private property without a permit and the written permission of the legal owner of the property.

(2) Permit review and approval.

(a) An application for a vending permit, including a scaled drawing of the proposed display apparatus and proposed signage, shall be submitted to the Town Clerk for approval or disapproval prior to commencing vending activity. The application shall be in a form prescribed by the Town Clerk.

(b) The Town Clerk may approve the application only after determining that:

i. The application, including fees and insurance evidence, is complete;

ii. The written permission of the legal owner of the proposed vending site has been obtained;

iii. The proposed vending activity is consistent with the purposes and requirements of this Article;

iv. The vending activity is consistent with the permitted uses in the zone district regulations of the Town;

v. The applicant has the ability to comply with the requirements of this Article and any necessary permit conditions;

vi. Applicable rules and regulations for permit administration have been met; and

vii. The Vending Subcommittee has approved the display apparatus.

The Town Clerk may adopt additional rules and regulations for accepting, reviewing and administering all permits, and all applicants shall comply with said requirements.

(3) Indemnification and liability insurance required. As a permit condition, persons engaging in vending activity shall agree to indemnify and hold harmless the Town, its officers, employees and agents against any and all claims for damage to persons or property arising out of or resulting from the permittee's actions or omissions in the permitted use. Vendors shall maintain comprehensive general public liability and property damage insurance. General vendors shall provide coverage limits not less one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per incident. Insurance policies shall name the Town, its officers, employees and agents as insureds; and shall provide that the insurance is primary and that no other insurance maintained by the Town will be called upon to contribute to a loss covered by the policy. The policy shall further provide written notice to the Town prior to cancellation or material change. Evidence of such insurance is required prior to permit issuance.

(4) Other licenses required.

(a) All applicants shall obtain required building or other permits or licenses from all applicable governmental entities before a permit is issued, including but not limited to a Colorado sales tax license, a Town business license, Town sales tax license, Town excise tax license and, if the vending activity includes any food product, written approval from the

San Miguel County Environmental Health Department. Vendors must be current with Colorado and Town sales taxes and Town excise taxes prior to the issuance of a permit. Thereafter, timely payment is required to maintain a permit.

(b) The vendor shall prominently display all required permits and licenses on the vending apparatus or, if no such apparatus is used, shall make such permits available upon reasonable request by any official of the Town.

(5) Nontransferable. The vending permit is not transferable or assignable.

(6) Noninterference. No person engaged in vending activity shall make any unnecessary sounds or noises, obstruct any sidewalk or other public property, disturb or impede other persons or otherwise author any public nuisance.

(7) Signage. Signage shall be painted on or attached to the display apparatus, and a drawing to scale of the proposed signage must be included in the application. Signs shall not exceed a total of eight (8) square feet. Signs shall not be lit.

(8) Rest rooms accessible. Those vending activities that include food service and provisions for seating of patrons shall provide accessible rest rooms within the immediate area that meet the specifications of the San Miguel County Environmental Health Department.

(9) Area maintenance. A vendor shall maintain both the permitted area, the immediate area surrounding the permitted area and the display apparatus in a neat, clean and hazard-free condition. Applicants must show proof of their ability to provide for disposal of trash generated by their business or, at the discretion of the Town Clerk, pay a Town trash fee of forty dollars (\$40.00) per month for pick-up of trash from nearby public containers.

(10) Review. Permits issued for vending on private property will be reviewed every six (6) months for compliance with permit requirements.

(11) Fees. There is a forty dollar (\$40.00) application fee and a ten dollar (\$10.00) renewal fee.

(12) The Town Clerk may approve insubstantial modifications to this Section if the intent of the Article is met.

(13) The use of gas powered generators is prohibited. Noiseless alternative energy generators will be considered.

(14) Long-term and short-term vending. Vendors on private property shall be either short-term or long-term vendors as defined in Section 6-4-20 above. All vendors shall comply with applicable rules and regulations.

(15) Long-term vending.

(a) Display apparatus. Display apparatus on private property must be no larger than seven (7) feet in width, sixteen (16) feet in length and nine (9) feet in height.

(b) Staff Vending Committee. The Town Clerk and the Planning Director, shall review proposed display apparatus and its site for appropriateness with respect to the character of the neighborhood. Display apparatus shall be reviewed for appropriateness based on the following criteria:

i. Compatibility with the character of the surrounding area.

ii. Orientation and siting with respect to impact on adjacent properties and public ways.

iii. Landscaping, including but not limited to surface materials, plants, benches, tables and trash receptacles.

iv. Compatibility of apparatus materials, finishes and colors with surrounding area.

v. Design, size and placement of signage.

vi. Appropriateness of lighting.

vii. Size and placement of flags, awnings and banners.

(c) Public notice. The applicant shall post the property with signage provided by the Town Clerk, at least ten (10) days prior to any permit being issued.

(d) Location. Long-term vending on private property is allowed on Colorado Avenue between Willow and Aspen Streets

(16) Short-term vending.

(a) Display apparatus. Display apparatus on private property must be no larger than seven (7) feet in width, sixteen (16) feet in length and nine (9) feet in height. The maximum size includes flags, awnings, banners and signage.

(b) Tents. Use of a tent as a display apparatus is permitted for short-term vending use. Tents shall be no larger than ten (10) feet in width, ten (10) feet in length and fifteen (15) feet in height. No vendor, agent, affiliate, parent or subsidiary thereof shall erect more than one (1) tent per event or one (1) tent per lot or contiguous lots.

(c) Location. Short-term vending is allowed in areas where commercial uses are allowed by zoning. (Prior code 5.12.050; Ord. 1252 §1, 2006; Ord. 1288, 2008)

#### **Sec. 6-4-60. Nonprofit waivers.**

Any person or organization with proof of nonprofit status may apply to the Town Clerk for approval of a waiver of vending permit fees or specific sections of this Article if doing so does not violate the intent of this Code. (Prior code 5.12.060; Ord. 1252 §1, 2006)

#### **Sec. 6-4-70. Penalties.**

(1) Violation of any of the provisions of this Article shall be a misdemeanor, punishable as set forth in Paragraph 1-4-10(a)(1) of this Code.

(2) Violations or noncompliance with any permit condition or provision of this Article may

also result in up to a one thousand dollar (\$1,000.00) fine per day of violation, or such other maximum penalty amount as set by Telluride Municipal Code Sec. 7-5-550 and 7-5-510 and/or immediate suspension or revocation of any vending permit by the Town Clerk, subject to the right of hearing within three (3) business days after any such suspension upon request of the permit holder. (Ord. 1416, 2014; Prior code 5.12.070; Ord. 1252 §1, 2006)

**Sec. 6-4-80. Appeals.**

All appeals of this Article shall be directed to the Town Council. Any appeal of a decision or final action by the Town Clerk may be made by filing with the Town Clerk a written notice of appeal within fourteen (14) days of the date of the decision or final action appealed. The Town Council will hear such appeal within thirty (30) days of filing of the appeal. (Prior code 5.12.080; Ord. 1252 §1, 2006)