

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 Article 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 Article, 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.

Summer Season is defined as May 15 through October 14 annually.

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 Subcommittee, Council means two (2) Town Councilpersons, assigned by the Town Council, (1) member of the Planning and Zoning Commission, and the Town Clerk as liaison

Winter Season is defined as October 15 through May 14 annually.

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, 2015 Ord. 1447, 2017)

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, wel-

fare 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 not be 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. 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 one application for each available site prior to the commencement of vending activity.

Late Applications. Late applications may be considered at the discretion of the Vending Subcommittee by written request from the Applicant including an explanation for the late filing, and with a \$40.00 late application fee.

(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) Additional Requirements.

i. Applicants shall obtain all required agreements, permits, licenses and approvals from all applicable governmental entities before a vending permit is issued, including but not limited to: (a) a Vending Agreement with the Town for use of public rights-of-way and other public property; (b) a Colorado sales tax license; (c) a Town business license; (d) a Town sales tax

license; (e) a Town excise tax license; (f) a “Mobile Retail Food Establishment License” issued by the State of Colorado, if applicable; and (g) inspection and approval of the display apparatus and site setup from the Town Clerk. 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. Slight variations may be approved at the discretion of the Vending Subcommittee. The use of tents is prohibited. All accoutrements must be contained in a 5' x 8' area. Accoutrements must be necessary to the business, must be orderly, and must not be potential safety hazards.

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 at the discretion of the Vending Subcommittee. The Vending Subcommittee will consider, but not be limited to, the below criteria in determining which applicants shall be issued permits. Criteria are not weighted or prioritized and include, but are not limited to:

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

ii. Town of Telluride vending history specific to the legal entity applying for the permit;

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

iv. Compliance and performance reviews conducted by the Vending Subcommittee during seasonal debriefs.

(k) Abandon/surrender.

i. During Summer Season (May 15 through 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, from the Friday prior to Memorial Day through the Sunday of the last Minor Festival as defined in Chapter 11, Article 4 of this code, 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. Vendors should adhere to intended hours of operation indicated in the application.

Prior written notification to and approval by the Town Clerk of allowed vacation days and extraordinary

circumstances is required if the minimum vending days cannot be met.

ii. During Winter Season (October 15 through May 14) a vendor who does not participate in vending activity for two (2) out of seven (7) days (Sunday to Saturday), weather permitting, from December 20 through the official closure of the ski area 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. Vendors should adhere to intended hours of operation indicated in the application.

Prior written notification and approval by the Town Clerk of allowed vacation days and extraordinary circumstances is required if the minimum vending days cannot be met.

iii. From October 15 through December 19 and from the day following official closure of the ski area through May 14, permittees are not required to vend.

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.

(1) 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.

Business Licenses and Regulations

Article 4 -- Vending

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

- i. Permits allowed: four (4).
- ii. Application fee: forty dollars (\$40.00), nonrefundable.
- 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: two (2).
- ii. Application fee: forty dollars (\$40.00), nonrefundable.
- 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 as assigned at the discretion of the Vending Subcommittee.

ii. Application fee: forty dollars (\$40.00), nonrefundable.

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; Ord. 1416, 2014; Ord. 1438, 2016; Ord. 1447, 2017)

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.

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

(4) 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.

(5) Additional Requirements.

(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 applicable, a State of Colorado issued Mobile Retail Food Establishment License. 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.

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

(7) 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.

(8) 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.

(9) 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.

(10) 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 condi-

tion. 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.

(11) Review. Permits issued for vending on private property will be reviewed at the end of each season for compliance with permit requirements.

(12) Fees. There is a forty dollar (\$40.00) application fee.

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

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

(15) 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.

(16) Long-term vending. Long-term vending permit holders on private property are subject to the provisions set forth in 6-4-50(1) through 6-4-50(15) of this Article.

(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. A public hearing must be held if remonstrances are received during the 10 day posting period.

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

(17) Short-term vending. Short-term vending permit holders on private property are subject to the provisions set forth in 6-4-50(1) through 6-4-50(15) of this Article.

(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; Ord. 1416, 2014; Ord. 1447, 2017)

Sec. 6-4-60. Nonprofit waivers.

Any person or organization with proof of non-profit 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 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)

ARTICLE 5

Medical Marijuana

*Section 100 General***Sec. 6-5-101. Findings and Purpose.**

Town Council finds that the cultivation, possession, sale and use of medical marijuana may be harmful to public health, safety, and welfare if not carefully regulated. This Article is designed to protect public health, safety, and welfare from the potential adverse effects of medical marijuana, while permitting medical marijuana to be cultivated, possessed, sold, and used in accordance with law. Town Council further finds and declares that the subject matter of this Article is a matter of local and municipal interest.

Town Council acknowledges that they have previously passed zoning and land use restrictions for Medical Marijuana Dispensaries under Town Ordinance No. 1323, Series of 2010, and now codified in the Telluride Land Use Code (“LUC”) in Article 3, Division 9 (Section 3-910 *et. seq.*). It is not the intent of this Article of the Telluride Municipal Code and this Medical Marijuana licensing scheme to alter or amend the zoning restrictions specified in LUC Section 3-910. Rather this licensing scheme and Article of the Telluride Municipal Code is designed to implement a local licensing authority and distinct rules for licensing medical marijuana, pursuant to the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et. seq.*, that is separate and distinct from the zoning aspects of LUC Article 3, Division 9. To the extent that any conflict exists between the terms of LUC Article 3, Division 9 and the provisions of this Article of the Telluride Municipal Code, it is the intent of the Town Council to have the provisions of the Telluride Municipal Code govern and control should a direct conflict exist. (Ord. 1348, 2011)

Sec. 6-5-102. Incorporation of general licensing provisions.

The provisions of the Telluride Municipal Code shall apply to this Article except where they may be inconsistent with the provisions of this Article. (Ord. 1348, 2011)

Sec. 6-5-103. Definitions.

The following definitions shall apply throughout this Article:

(a) The definitions contained in Article XVIII, Section 14, Colorado Constitution and C.R.S. §12-43.3-104 shall apply to this Article except where the ordinance provides a different definition or the context of this Article makes it clear that the statutory or constitutional definition does not apply.

(b) *Adjacent Grounds*: means all areas that the licensee has an exclusive right to possess by virtue of his ownership or lease, which are outside the enclosed licensed premises, but adjacent and contiguous to the licensed premises, including but not limited to porches, patios, decks, entryways, lawns, parking lots, and similar areas and all fixed and portable things in those areas, including but not limited to lights, signs, speakers, and security devices.

(c) *Approve a License*: means to find that the requirements for a license have been met, but does not give the applicant the right to operate a medical marijuana facility until the license is issued.

(d) *Authority*: means the Telluride Medical Marijuana Licensing Authority, which may be either an individual hearing officer or a Board.

(e) *Character and Record*: includes all aspects of a person's character and record, including but not limited to moral character, criminal record, serious traffic offenses, record of previous sanctions against liquor licenses, gambling licenses, or medical marijuana licenses, which the person owned, in whole or in part, or in which the person served as a principal, manager, or employee; education, training, experience, civil judgments, truthfulness, honesty, and financial responsibility.

(f) *Complaint*: means a document filed with the Authority by the Town, any of its Departments, or the Authority itself, seeking sanctions against a medical marijuana license.

(g) *Contiguous*: means located within the same building as the medical marijuana center, located in a separate building on the same parcel of land as the medical marijuana center, or located