

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2021 -196

**AN ORDINANCE AMENDING CHAPTER 6 OF THE
JOHNSTOWN MUNICIPAL CODE TO INCLUDE
ARTICLE XI, OUTDOOR VENDORS**

WHEREAS, the Town of Johnstown, Colorado is a municipal corporation duly organized and existing under its Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, the Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Chapter 6 of the Johnstown Municipal Code regulates licensing in the Town; and

WHEREAS, to regulate the sale of goods and services within the Town, support and enhance the Town’s business community and ensure appropriate activities and uses within the various commercial areas and residential neighborhoods in the Town, the Town Council desires to adopt policies and procedures regulating outdoor vendors and the use of food trucks and pushcarts in the Town; and

WHEREAS, the Town Council finds that it is in the best interest of the Town of Johnstown to amend Chapter 6 of the Johnstown Municipal Code to include Article XI, Outdoor Vendors.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Chapter 6 of the Johnstown Municipal Code shall be amended to include Article XI, Outdoor Vendors, and shall read as follows:

ARTICLE XI OUTDOOR VENDORS

Sec. 6-200 Purpose; administration.

- (a) The permitting of outdoor vendors is intended to regulate the sale of goods and services within the Town to support and enhance the Town’s vibrant business community and ensure appropriate activities and uses within the various commercial areas and residential neighborhoods within the community.
- (b) The Town Manager is hereby delegated authority to implement rules and regulations governing outdoor vendors that are not inconsistent with the provisions of this Article. Such rules and regulations shall be on file and available for public examination in the office of the Town Clerk.

Sec. 6-201 - Definitions.

For the purposes of this Article, the following terms shall have the following meanings ascribed to them:

Food shall mean any edible item intended for human consumption, including beverages.

Mobile food truck shall mean a legal, licensed motorized wheeled vehicle or towed, wheeled trailer designed and equipped to prepare and/or serve food from the interior of the truck or trailer.

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 approved outdoor location, except that outdoor vendor shall not include a person who:

- (1) Vends from private non-residential property where the same or similar services or goods are also offered on a regular basis from an indoor location on such premises;
- (2) Vends directly and exclusively to manufacturers, wholesalers, or retailers for the purpose of resale;
- (3) Vends by or on behalf of the Town or at an outdoor event sponsored by the Town;
- (4) Vends from property owned by the Town, if such vending is pursuant to a concession agreement or other agreement with the Town;
- (5) Vends at a garage or yard sale at a residence held outside or within a garage or residential accessory building;
- (6) Vends outdoor transportation services as a public utility under a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission or as a provider of public transportation by or on behalf of a governmental agency;
- (7) Vends by or on behalf of any public or private school;
- (8) Delivers preordered packaged food; or
- (9) Vends pursuant to a Town-issued special events permit.

Outdoor Vendor Policy shall mean a policy setting forth rules and regulations adopted by the Town Manager regulating the activities of outdoor vendors and the use of mobile food trucks and pushcarts in the Town.

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 property shall mean any location that is not a public facility, right-of-way, park, plaza, street, alley or sidewalk.

Pushcart or *cart* shall mean a mobile vending cart or pushcart that is not motorized or attached to a vehicle and is designed to vend from the exterior of the unit. A pushcart or cart may not exceed ten (10) feet in length (excluding the length of any trailer hitch), four (4) feet in width, and eight (8) feet in height; carts larger than these dimensions shall be considered mobile food trucks for the purposes of this Article, when vending food and beverage items.

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

6-202 - Licenses required.

- (a) An outdoor vendor shall obtain an outdoor vendor license for each mobile food truck, vehicle, pushcart or other outdoor point-of-sale structure used to vend the sale of goods and services in compliance with the provisions of this Article.
- (b) An outdoor vendor shall obtain and maintain all licenses or permits required by fire districts, health departments, and county, state, or federal governments.

6-203 - Application for license; insurance; term; fee.

- (a) The Town Clerk shall create an application for an outdoor vendor license. The form of application shall be posted on the Town's website and be readily available to the public. In addition to the information required in the application, the Town Clerk may request and require any other information necessary to consider the request for an outdoor vendor license.
- (b) An application for a license shall be submitted to the Town Clerk no less than ten (10) business days prior to the first day of proposed operation.
- (c) If intending to operate on any public street or public property, an outdoor vendor shall obtain and maintain general liability, automobile, and workers compensation insurance, in the amount required in the application, shall provide certificates of insurance to the Town with the application, and, except for workers compensation, name the Town as an additionally insured party.
- (d) A request for a modification of an existing license to add new locations or modify other license restrictions or conditions, as applicable, shall be submitted to the Town Clerk and shall meet all of the requirements and be reviewed in the same manner as an application for a license hereunder.
- (e) Each license shall be valid for the then-current calendar year and, assuming compliance with this Article and the Outdoor Vendor Policy, may be renewed on January 1 of each year thereafter.
- (f) An applicant shall pay a license fee for the issuance, modification, or renewal of an outdoor vendor license in an amount determined by resolution of the Town Council in the Town Fee Schedule. The license fee shall be due and payable with the submission of the application and shall be returned if an outdoor vendor license is not issued.

6-204 - Review and approval of application.

- (a) The Town Clerk shall timely review each outdoor vendor license application and 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 Article and the Outdoor Vendor Policy and compatible with the public interest. In making such determination, the Town Clerk, in consultation with Town staff as appropriate, shall consider, among other appropriate factors:
 - (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, pavement type, the volume of traffic, and the availability of off-street and on-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, signposts, lampposts, bus stops, benches, telephone booths, planters and newspaper vending devices;

- (3) The probable impacts to a neighborhood, commercial, district, or sensitive or historic area that may result from noise, odors, congestion of a street or gathering place;
 - (4) The probable impacts of the proposed use on the maintenance, care and security of the specified location, if location is on public property or right-of-way;
 - (5) The level and types of outdoor vendor activity already licensed for the specific location(s) proposed in the application; and
 - (6) Whether the proposed use conforms to the zoning requirements of the specified location.
- (b) If the Town Clerk determines that the issuance of a requested outdoor vendor license would be consistent with the requirements of this Article and with the requirements of the Outdoor Vendor Policy, with or without additional conditions, the Town Clerk shall issue the license, subject to any such conditions. If the Town Clerk determines that the issuance of an outdoor vendor license would not be consistent with the requirements of this Article or the Outdoor Vendor Policy, the Town Clerk shall notify the applicant of his or her determination in writing, with an explanation of the reasons for such denial.

6- 205 – Temporary suspension due to changed conditions.

The Town Clerk may suspend the vending operation of any licensee or all licensees at any designated location if the Town Clerk, in consultation with appropriate Town staff, determines that the licensed activity in such location no longer meets the requirements of this Article or the Outdoor Vendor Policy due to construction activity or other changed conditions affecting public health, safety, or welfare. In such event, the Town Clerk shall provide written notice to the affected licensee(s) of the temporary suspension of the license(s). The authorization to resume operations in such location shall not be reinstated until such time, if at all, as the Town Clerk provides additional written notification. A temporary suspension as contemplated herein shall not extend the term of the affected license(s).

6-206 - Revocation or nonrenewal.

The Town Clerk, in consultation with appropriate Town staff, may, by providing written notice to the licensee, temporarily suspend, permanently revoke or decline to renew any outdoor vendor license if the Town Clerk determines that any of the following have occurred:

- (a) The application contained fraud, misrepresentation or a false statement of fact;
- (b) The licensee makes a fraudulent or false representation of fact in the course of business operations under the license;
- (c) The licensee fails to remit sales tax due and owing to the Town;
- (d) The licensee fails to operate or supervise operations conducted under the license to ensure the licensed activities comply with the terms of the license, the provisions of this Article and the Outdoor Vendor Policy;
- (e) The licensee authorizes, condones, or knowingly tolerates 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;
- (f) The licensee fails to maintain the required insurance; or
- (g) The licensee’s activities are not in compliance with this Article, the Outdoor Vendor Policy or any other provision of the Code.

6-207. - Appeal.

- (a) Any person aggrieved by the action of the Town Clerk as set forth in this Article, may, within ten (10) days of receipt of written notice from the Town Clerk, file a written appeal to the Town Manager. The Town Manager shall thereafter promptly review the appeal and, after taking action that the Town Manger deems appropriate, provide written notification to the licensee affirming the Town Clerk's decision, affirming the Town Clerk's decision with conditions, or reversing the Town Clerk's decision.
- (b) Within ten (10) days of receipt of written notice from the Town Manager, the licensee may appeal the Town Manager's decision to the Town Council by providing written notice to the Town Clerk. The Town Clerk shall thereafter, as soon as reasonably practicable, set a hearing before Town Council. The Town Council's decision shall be final and conclusive.
- (c) For purposes of this section, written notice shall be deemed received upon hand delivery, delivery of electronic mail correspondence containing the written notification, on the condition that the recipient acknowledges receipt of the electronic mail, or three (3) days after placing the written notification in the U.S. Mail. Written notice to the licensee shall, if delivered by U.S. Mail, be sent to the licensee's last known address, which, unless the licensee otherwise notifies the Town, shall be the address contained on the application.

6-208. – Violation; cumulative remedies.

- (a) Any person who violates any provision of this Article or the Outdoor Vendor Policy may be punished in accordance with the provisions of Article IV of Chapter 1 of the Code.
- (b) No remedy provided herein shall be exclusive, but the same shall be cumulative. The taking of any action permitted by this Article shall not preclude or prevent the taking of other action, including the filing a charge or conviction of a violation of this Article in the Municipal Court.

Section 2. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 3. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 4. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town's Home Rule Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance shall be available at the office of the Town Clerk.

INTRODUCED AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2021.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the
Town Council of the Town of Johnstown, Colorado, this ____ day of _____,
2021.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor