

ARTICLE II Vendors, Flea Markets and Street Fairs (§ 231-9 — § 231-22)

[Adopted 4-27-2004 by Ord. No. O-04-07 (Secs. 12-56 to 12-69 of the 1987 Code)]

§ 231-9 Solicitation for charities; permit; raffles; violations and penalties.**A.**

No person shall solicit financial aid or assistance from the public offering in return therefore any emblem tag, flower or like symbol; solicit funds for charitable purposes; or sell tags, flowers or other objects for charitable purposes unless a charitable solicitation permit for such activity is obtained from the City Clerk. Charitable solicitation permits shall be issued for a two-day period only. Payment of a fee for a charitable solicitation permit is not required. The holder of such a permit is not authorized, by receipt of a permit, to enter upon private property for charitable solicitation without the consent of the owner of that property.

B.

The authority for the issuance of raffle permits granted under RSA 287-A to the Mayor and Aldermen is hereby granted to the City Clerk. All such permits shall be issued by the City Clerk in accordance with the provisions of RSA 287-A, as it is now written or may hereafter be amended. The fee for each raffle permit shall be \$10. All raffle tickets will show the raffle license number.

C.

If any person shall violate the provisions of this section, he or she shall be punished as provided in § 1-12 of the City Code for each offense and in addition thereto shall forfeit all sums taken in violation of this section to the use of the City.

§ 231-10 Definitions.

As used in this article:

FLEA MARKETS AND SHOWS EXHIBITING WARES FOR SALE

A group of at least five vendors operating in one structure in accordance with the requirements of the Zoning Ordinance

Editor's Note: See Ch. 190, Land Use, Part 2.
and other pertinent City requirements.

HAWKER or PEDDLER

Any person, either principal, agent or employee, who goes from town to town or from place to place in the same town, or from a temporary place of business, selling or bartering, or carrying for sale or barter or exposing therefore any goods, wares, merchandise, or services.

ITINERANT MAGAZINE SALESMAN

Any person, either principal, agent or employee, who engages in a temporary or transient business in this City of traveling from house to house soliciting orders for magazine subscriptions or renewals.

ITINERANT PHOTOGRAPHER

Any person, either principal, agent or employee, who engages in a temporary or transient business in this City, whether such person conducts their business by traveling from house to house taking pictures in a house, or operating from a hotel room, store or other place of business, or otherwise, and who performs any of the following acts of the photography business: solicits orders, takes pictures, assists in the taking of pictures, shows proofs, delivers pictures, or makes collections for pictures sold.

ITINERANT VENDOR

Any person, either principal, agent or employee, who engages in a temporary or transient business in this state, either in one locality or traveling from place to place, selling goods, wares and merchandise from stock or by sample for future delivery, and who, for the purpose of carrying on such business, hires or occupies any building or structure for the exhibition and sale of such goods, wares and merchandise or samples.

STREET FAIR

A special event conducted within a limited, defined geographic area for a period of time not to exceed four days.

VENDOR

Flea market and shows exhibiting wares for sale, hawker, peddler, itinerant magazine salesman, itinerant photographer, itinerant vendor or street fair.

§ 231-11 Vendor's license.**A.**

No person shall act as a vendor within the City of Nashua unless licensed to do so.

B.

Each applicant for a vendor's license shall apply in writing to the City Clerk upon a form to be determined by the City Clerk. The application shall include:

(1)

The name, home and business address of the applicant, and the name and the address of the owner, if other than the applicant, of the business and of any stand or motor vehicle to be used in the vending;

(2)

A description of the source and type of food, beverage, merchandise, or service to be sold and in the case of products of farm or orchard, whether produced or grown by the applicant;

(a)

A separate food service license (in addition to the vendor's license) must be obtained from the Environmental Health Department for the sale of various food items.

(3)

A description or photograph of any stand or motor vehicle to be used for the vending, including the license and registration number of any motor vehicle used for the vending; and

(4)

A certificate of insurance that the applicant has been issued an insurance policy by an insurance company licensed to do business in the state, protecting the licensee and the City from all claims for damages to property and bodily injury, including death which may arise from operations under or in connection with the license. Such policy shall include coverage that the Insurance Department deems necessary. Exceptions to certificates of insurance may be considered on a case-by-case basis by the Insurance Department to modify guidelines to meet the exposures presented in a specific activity. Factors to consider in determining the required insurance coverage include but are not limited to the use of vehicles, the potential audience, and the history of the applicant. The required insurance coverage may include:

(a)

The City is named as additional insured for all liability arising out of the operation by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for bodily injuries, deaths, or property damage or destruction arising in any respect, directly or indirectly, in the performance of the license;

(b)

Inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured;

(c)

The insurance provided herein is primary, and no insurance held or owned by the City shall be called upon to contribute to a loss;

(d)

The coverage provided by this policy shall not be reduced or cancelled without 30 days written notice given to the City; and

(e)

The licensee shall submit certificates of insurance countersigned by a state licensed agent prior to the effective date of the license.

C.

All vendors and licensees required by law to have City health licenses, state licenses or licenses of any other type, are responsible for obtaining said licenses and shall be considered in violation of this article in the event that they are found to be without said licenses. All health licenses shall be posted in a conspicuous place.

D.

As a condition of licensure, and at any time during the license period, an applicant or licensee may be subject to additional restrictions or conditions ordered by the Building, Health, Police or Fire Departments as may be warranted by any circumstances pertaining to a specific vendor or vending site or to prevent any nuisance related to or caused by the licensed activity. A "nuisance," in addition to its common law meaning, is anything that endangers life, health or safety, gives offense to senses, violates common standards of decency or obstructs the reasonable use, enjoyment, or habitation of any property.

E.

The license may limit the amount of space to be occupied by the vendor.

F.

Any person who employs others to sell, solicit or take orders under a permit issued under this article, as well as the employer of a group of persons selling, soliciting or taking orders without a permit, shall be held responsible and liable for the acts of his or her employees and shall be deemed in violation of this article in the same manner as though he or she were the actual employee in question.

G.

The vendor's license fee shall be \$10 for each day less than one week, or \$25 for one week, or \$100 for the year.

H.

All annual licenses issued under this section shall expire December 31 of each year.

§ 231-12 Additional regulations.A.

All licenses shall be displayed in a conspicuous place at all times during the operation of the vending business.

B.

Ice cream and/or canteen truck vendors shall be permitted in the residential zones of the City in accordance with any ordinances of the City of Nashua.

C.

Vendors at special events licensed under Chapter 88, Article III (Theaters and Shows) or at street fairs, shall comply with all applicable provisions of this article and rules and regulations issued pursuant to it and pay all fees as required by the person coordinating the special event.

D.

Support equipment and accessories shall be self-contained within the retail stand when the vendor is not present. Support equipment and accessories shall not be placed so as to impede pedestrian or vehicular traffic. In no instance shall the stand, support equipment and accessories extend beyond an area of nine feet by 20 feet or beyond the space defined by the license, assigned by a street fair licensee, or as established within the Downtown District.

§ 231-13 Prohibited acts.

No vendor shall:

A.

Directly or indirectly, cause or permit the public streets, sidewalks or places to be littered with papers, wrappings or other debris or refuse where the littering results from the conduct of his or her business;

B.

Use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public;

C.

Operate in any metered parking area or no-parking zone, unless otherwise provided;

D.

Operate in any area where his or her operation will be deemed by the Police Chief or Fire Chief, or his or her designee, to endanger or inconvenience the general public, including but not limited to sidewalk and roadside areas;

E.

Operate within 40 feet of driveways, intersections, bus stops or crosswalks;

F.

Set up a parking lot selling operation without the written permission of the owner of the property on which the operation is located, and such written permission shall be available for display upon request at all times;

G.

Operate in a manner that obstructs or prevents the free and convenient use of any street or sidewalk by pedestrian or vehicular traffic;

H.

Sell, or offer to solicit for sale, any goods or merchandise in any park, playground, pool area, or other City recreational facility, without a special permit, nor give any entertainment or exhibition except under the direction, or by permission, of the Superintendent, as provided for under Article I of Chapter 215, Parks and Recreation Areas;

I.

Sell, or offer to solicit for sale, any goods or merchandise, nor give any entertainment or exhibition in any land or water areas under the jurisdiction of the Conservation Commission of the City, as provided for under Article I of Chapter 12;

J.

Place or expose for sale or advertisement, merchandise of any description or other article on any sidewalk of the City except in conjunction with a properly licensed street fair or when such activity occurs as an incidental part of the retail sales activity of a merchant regularly conducting business from a permanent building where such sales are conducted on the premises of the building and in close proximity to said building, and the person engaged in such sidewalk displays or sales has obtained a license for a sidewalk obstruction as required under § 285-9;

K.

Enter any house, building or premises where there is posted on the front of the house, building or premises a written notice stating that vendors are not desired, unless the vendor has received the prior consent of the occupant; or

L.

Display any flashing or changing (electronic) sign.

§ 231-14 Downtown District.

A.

This section shall apply to the Downtown District shown on the Downtown Outdoor Vending District Map filed with the City Clerk by the Economic Development Department and adopted as a part of this article by reference. Said map may be revised periodically by the Economic Development Department. The area described as the Downtown District shall include all street area, sidewalks and areas in front of all properties, buildings and vacant lands fronting on said boundaries.

(1)

The map shall include a master list of all sites within the Downtown District that shall be available to street vendors, which may generally include all, or a portion of the following areas:

(a)

Railroad Square;

(b)

Main Street Bridge;

(c)

City Hall Plaza;

(d)

Public portion of Indian Head Plaza; and

(e)

Superior Court Plaza.

(2)

In addition, the map shall set forth the following information for each area:

(a)

The number of vendors to be allowed;

(b)

Restrictions as to the type of product to be allowed (e.g., food only, nonfood only, or both food and nonfood);

(c)

Any restrictions as to days or times allowed;

(d)

Whether the site is seasonal or yearlong; and

(e)

Any other special conditions that may apply.

§ 231-15

Special rules for flea markets and shows exhibiting wares for sale.

A.

The fee for additional vendors over 10 shall be \$5 per vendor per month for a minimum of one month, for flea markets and shows licensed for four or more days per month, payable in advance.

B.

Licenses for qualifying flea markets and shows exhibiting wares for sale may be issued by the City Clerk. All fees therefor shall be paid to the Clerk in advance of any month to which the license pertains, or the same shall be void. Licenses issued shall be issued to one named individual or organization who shall be the promoter of the flea market or show exhibiting wares for sale and who shall be responsible therefor, and shall be responsible for compliance with all terms, conditions and requirements of the license and pertinent law.

C.

Said person shall additionally:

(1)

Keep a register of all vendors participating in the flea market or show exhibiting wares for sale including such information as the City Clerk may require from time to time.

(2)

File said register with said Clerk on a monthly basis, on or before a date to be specified by the Clerk.

(3)

Assure that vendors sell only goods permitted by law.

(4)

Assure that vendors conduct themselves in a lawful and commercially reasonable manner.

(5)

Take such actions as shall be necessary in order to carry out his or her responsibilities hereunder.

§ 231-16

Special rules for transient or itinerant magazine salesmen.

A.

No person shall engage in the business of an itinerant magazine salesman except between the hours of 9:00 a.m. and 8:00 p.m.

B.

Each application for an itinerant magazine salesman's license shall also include the name and address of all organizations by which he or she is employed or receives commissions or compensation of any kind; whether he or she has ever before applied for a license under this section; and verification of identity. The license shall not be transferable and must be presented to any party being solicited for magazine orders or to any police officer upon request.

C.

Any person convicted of a violation of any of the provisions of this section shall have his or her license revoked and no license shall be issued to such person for a period of three years.

§ 231-17 Special rules for street fairs.

A.

A street fair vendor license shall limit the use of such geographic area by any hawker, peddler, or any other such vendor during the period of the street fair license except such owners or tenants of buildings, rooms or structures within the geographic area, and except in such persons as the holder of the street fair vendor license authorizes to be in the geographic area; provided, however, that a business occupant of a storefront on the ground floor of a building, located within said geographic area, may apply for an exemption to the street fair vendor license restrictions by: first, obtaining a license to obstruct the sidewalk as provided under § 285-9, for the sale of items or promotion of services which are related to the regular and recurrent business activity of the business in operation at that location; and second, applying for a street fair license exemption by delivering to the City Clerk a copy of the license obtained under § 285-9, along with a letter describing the products to be sold or the services to be promoted, no less than 72 hours prior to the event. If the City Clerk determines that the sale of items or promotion of services is related to the regular and recurrent business activity of the ground floor business in operation at that location, he or she shall issue a street fair license exemption upon payment of a \$10 fee and shall notify the street fair vendor license applicant within 24 hours or granting said exemption. The person obtaining the exemption must comply with all applicable state and local restrictions, rules, regulations, ordinances and statutes.

B.

The licensee shall have the authority to issue sublicenses upon payment of a fee not to exceed \$150 for the period of the street fair vendor license, and shall have the authority to designate areas of use by the sublicensee.

C.

The licensee shall have full discretion in issuing sublicenses, such discretion to be exercised taking into consideration the purpose, nature and general atmosphere of the proposed street fair for which the exclusive license was issued, provided that the licensee and sublicensees shall, at all times, comply with the ordinances, rules, regulations, and conditions under which the license was issued.

D.

A written notice of intent to apply for a street fair license must be submitted at least 14 days prior to the date(s) for which the license will be requested.

E.

All applications for street fair licenses shall include a petition signed by 50% of the ground-floor occupants of any and all buildings, structures or rooms to be included in the geographic area which is the subject of the proposed exclusive license, or by an organization or professional association whose members include 50% of the ground-floor occupants of any and all buildings, structures or rooms to be included in the geographic area, or a combination of the two.

F.

All applications shall include a copy of the applicant's state license(s) and/or license from the Environmental Health Department, if such licenses are required by statute or ordinance.

G.

The street fair vendor licensee shall make suitable provisions to allow for solicitation and dissemination of materials by charitable and nonprofit groups.

H.

The City shall be paid a fee of \$5 per sublicensee, and the licensee shall provide a list of all sublicensees and a map detailing the assigned locations of all sublicensees to the City Clerk no less than 72 hours prior to the event.

I.

The map detailing the assigned locations of all sublicensees is subject to the review of the Mayor or his or her designee and may be subject to additional restrictions or conditions ordered by the Mayor or his or her designee, the City Clerk, or the Building, Health, Police or Fire Departments as may be warranted by any circumstances pertaining to a specific vendor or vending site or to prevent any nuisance related to or caused by the licensed activity.

§ 231-18 Sunday activities.

It shall be lawful on Sunday to engage in any play, game or sport to the maximum extent permitted by state law.

§ 231-19 Sunday sales.

It shall be lawful on Sunday to keep any shop, warehouse, cellar, restaurant or workshop open for the reception of company, and to expose for sale any merchandise whatever.

§ 231-20 Exemptions.

[Amended 2-26-2008 by Ord. No. O-08-07]

The following are exempt from the provisions of this article:

A.

Persons enrolled in elementary and secondary schools conducting such solicitations under the direction and guidance of the school or other charitable organization.

B.

Individuals under the age of 16 years who vend Girl Scout cookies, candy, lemonade, or similar items.

C.

Any person issued a charitable solicitation permit under § [231-9](#).

D.

A vendor activity or event, sponsored or cosponsored by the City of Nashua, shall be subject to licensure. However, payment of a fee is not required.

E.

A vendor covered under this chapter, who sells only Christmas trees, wreaths, and/or boughs.

[Added 11-25-2008 by Ord. No. O-08-45]

§ 231-21 Violations and penalties.

A.

Any person who shall violate any provision of this article shall be subject to punishment as provided in § [1-12](#) of the City Code.

B.

Notwithstanding other provisions of this article, licenses issued under this article may be suspended or revoked by the City Clerk after notice for any of the following causes:

(1)

Fraud, misrepresentation, or false statement contained in the application for license;

(2)

Fraud, misrepresentation, or false statement made in the course of carrying on the vending;

(3)

Any violation of this article;

(4)

Any violation of applicable municipal building, zoning, health, police and fire rules, regulations, and ordinances and applicable statutes, rules and regulations of the state;

(5)

Any violation of a restriction or condition placed on the license; or

(6)

Vending or activity that endangers the public health, welfare or safety.

C.

Upon receipt of notification of denial or pending suspension or revocation of a vendor's license, or for the issuance of new or revised conditions or restrictions on the licensee from the office of the City Clerk, the applicant or licensee may request, in writing, a hearing before the personnel and Administrative Affairs Committee of the Board of Aldermen. The request must be made within 10 days of the date of notice. The Personnel and Administrative Affairs Committee shall set a hearing date, notifying the applicant or licensee of said hearing date. The hearing will be held at the earliest possible date and the matter shall be decided within a reasonable time. The applicant or licensee will be notified of the decision of the Committee, and the decision by the Committee to deny, restrict, suspend, or revoke a vendor license shall be final.

§ 231-22 License remains property of City.

Licenses granted under this article shall remain the property of the City and are to be returned to the office of the City Clerk during a period of suspension, after revocation, or if the person, firm, corporation, or association holding the vendor license ceases to operate.