

# **TOWN OF GORHAM**

## **VICTUALER'S ORDINANCE**

Adopted - October 6, 1998

Amended - July 1, 2008

Amended - April 7, 2009

Amended – November 13, 2018

# TOWN OF GORHAM

## VICTUALAR'S ORDINANCE

### SECTION 1 - PURPOSE

- A. The purpose of this Ordinance is to regulate the sale of prepared food in the Town of Gorham. The regulations are those which the Town Council in a public meeting has clearly found to be necessary in order to protect the general welfare, public safety and health of the Town of Gorham and its citizens.
- B. The Town hereby adopts the most recent version of the State of Maine Food Code (hereinafter, "Food Code") as adopted by the Maine Department of Health and Human Services and the Maine Department of Agriculture, Conservation and Forestry, as may be amended from time to time.

### SECTION 2 – DEFINITIONS

- A. "Catering establishment" shall mean an establishment providing catered meals to eat at planned functions off premises, but which does not provide meals to the general public on a walk-in basis at the premises.
- B. "Food establishment" shall mean any place where food or drink is prepared and served, or served to the public for consumption on or off the premises, which includes, but is not limited to, restaurants, coffee shops, cafeterias, luncheonettes, sandwich shops, soda fountains, farm stands selling prepared foods, catering establishments, and mobile vending units.\_
- C. "\_Mobile vending unit" shall mean any vehicle used for the sale of any prepared food, sandwiches, drinks, ice cream or similar dairy products, and shall include pushcarts, motorized conveyances licensed by the state as motor vehicles, trailers, mobile stands, food trucks, or other units that are capable of being driven, hauled, pushed or otherwise moved from place to place and from which food sales are made.
- D. "Victualer" shall mean any person who serves food or drink prepared for consumption by the public and operates any food establishment within the Town of Gorham.

### **SECTION 3 - LICENSE**

- A. No person may operate any food establishment where food or drink is prepared or served to the public for consumption on or off the premises without first obtaining from the Town Clerk a Victualar's License in order to operate within the Town of Gorham.
- B. Food establishments must be in compliance with all local ordinances, and property taxes and local fees related to the premises must be paid in full prior to the issuance or renewal of a Victualar's License.
- C. Victualar's License are valid for one year and must be renewed annually. A license shall be specific to the premises and entity which is requesting the license. For example, a facility which is owned or operated at more than one location, or in the same location and is operated by different parties or personnel or which are physically separated shall require separate permits.
- D. Victualar's Licenses issued under this Ordinance shall be displayed in a public, conspicuous place at the licensed premises.

### **SECTION 4 - EXCEPTIONS**

- A. This ordinance shall not apply to the following uses: a public or private school, any non-profit organization, Police or Fire Department, or any booster group selling food or drink to raise money for a charitable cause on a temporary basis; grocery stores, except those selling food items prepared on the premises; educational activities or public agency programs; and vending machines selling food and drink. The Town Clerk may request an organization to provide proof of non-profit status as part of a complete application. The Town reserves the right to require health and safety inspections at any of the above mentioned locations / entities and order corrective actions if needed.
- B. Businesses offering food or beverages, such as coffee and donuts, free of charge to clients are exempt from this ordinance.

### **SECTION 5 - APPLICATION PROCESS**

- A. New License: New applicants may apply for a Victualar's License at any time during the year. Applications for a Victualar's License shall be procured from the Town Clerk, completed and signed by the applicant and filed with the Town Clerk. If the Town Clerk is not satisfied that the application is complete, he or she may reject the application. Upon receipt of a complete application, the Town Clerk shall forward the application to the Code Enforcement Officer, Police Chief, Fire Chief and Finance Director for review. If all of the above mentioned individuals recommend

approval of the application the Victualar's License shall be granted. A Victualar's License shall be granted by the Town if the property in question complies with all federal, state and local laws, the applicant possesses an applicable state license, the applicant is not delinquent in the payment of any taxes or fees owed to the Town of Gorham, and the applicant demonstrates that the premises will be conducted in a healthful and sanitary manner in accordance with the Food Code so as not to jeopardize the public health, safety and welfare. A new Victualar's License, when granted, shall be valid until June 30<sup>th</sup>, immediately following said granting of license. An applicant may appeal the denial of a license to the Town Council in writing within 30 days of the date of denial. The Town Council will then, after public hearing, consider the appeal on a de novo basis.

- B.     Renewal License: An existing license may be renewed by the Town Clerk, provided that the holder of the existing license makes application for renewal on or before June 30<sup>th</sup>. If the holder applies for renewal on or before June 30<sup>th</sup>, the existing license shall remain in effect until final action of the renewal application. Otherwise, the existing license shall expire on June 30<sup>th</sup> and an application for a new license must be filed. The Clerk may renew a license only if the Clerk is satisfied that the application meets all the requirements of this ordinance. If the Clerk is not satisfied that the application meets all the requirements of this ordinance, the Clerk shall refer the application to the Town Council, which after public hearing, shall process the application in the same manner as an application for a new license.
  
- C.     Renewal Procedure: The Fire Chief, Police Chief, Zoning Administrator, Town Clerk, Code Enforcement Officer and Finance Director or any of their authorized designees shall annually review all renewal applications for the purpose of determining the status of the applicant's previous conformance to all applicable ordinances and codes, including this ordinance and at such time the Town Clerk shall make a decision as to (1) approve the renewal request, (2) table the renewal request, setting a date for the applicant to come before the municipal departments to answer questions affecting consideration of the renewal request, or (3) for reason(s) noted, disapprove the request. Applicants for renewal shall submit a completed application with fees annually to the Town Clerk at least 30 days prior to the expiration date. In situations where corrective actions are required by the Fire Chief, Police Chief, Zoning Administrator, Town Clerk, Finance Director or Code Enforcement Officer a license *may* be renewed providing that a written plan of corrective actions has been established. Failure to make the required corrective actions by the agreed upon date/s may be sent to the Town Council for a suspension / revocation hearing at the next scheduled Town Council meeting.

## **SECTION 6 -ADVERTISEMENT AND PUBLIC HEARING**

- A. For new or renewal licenses requiring Town Council action the Council shall hold a public hearing.
- B. Prior to any public hearing held in accordance with this Ordinance, the application shall be advertised by posting notice in 2 or more public places and advertising in a local newspaper, at least 7 days prior to the public hearing.

## **SECTION 7 -SECURING, SUBMITTING OF APPLICATION FOR LICENSE**

- A. Applications for a license required by this Ordinance shall be procured from the Town Clerk, completed and signed by the applicant and filed with the Town Clerk, and if referred to the municipal officers shall bear the recommendation for approval or disapproval with reasons noted of the Code Enforcement Officer, the Police Chief and the Fire Chief, and such other departments as may be required by the Municipal Officers or other Town ordinances.
- B. Inspection: An establishment requesting a license shall be inspected by the Codes Enforcement Officer and the Fire Chief / Fire Inspector prior to any action being taken on the license application. Any alterations or changes to an establishment will require additional inspections.
- C. A Victualar's License shall be granted if the property in question complies with all federal, State and local laws and the applicant demonstrates that the Victualar's premises will be conducted in a healthful and sanitary manner so as not to jeopardize the public health, safety and welfare, provided that the applicant is not delinquent in the payment of any taxes or fees owed to the Town of Gorham.
- D. The Town may grant new applications or renewal license requests subject to conditions of approval as deemed necessary by the Town Council based on recommendations from the Fire Chief, Police Chief, Zoning Administrator, Finance Director and Code Enforcement Officer.

## **SECTION 8 – HEALTH AND SAFETY REQUIREMENTS**

All establishments must comply with all federal, state and local ordinances, laws and regulations as to the premises, including all building codes, fire and life safety codes. In addition, all

establishments must fully comply with the following items related to health and safety:

- A. All rooms in which food and drink are prepared or in which utensils are washed shall be well lighted and ventilated.
- B. All walls, floors and ceilings shall be kept clean and in good repair.
- C. All windows, doors and other openings into the outside air shall be effectively screened and doors shall be self-closing, unless other effective means are provided to prevent the entry of flies.
- D. There shall be at least one toilet and sink with hand soap, and with a self-closing door, on the premises of all establishments that provide facilities to consume food or alcoholic beverages on the premises or when 8 or more persons are employed at any one time on the premises. All toilet rooms shall be kept in clean condition, in good repair, well lighted and ventilated.
- E. All equipment and utensils, including display cases, windows, counters, shelves, tables, refrigerators, stoves, hoods and sinks shall be clean and free from dust, dirt, insects and other contaminating material.
- F. All multi-use utensils used in the preparation or serving of food or drink shall be thoroughly cleaned and subjected to an adequate bactericidal process after each usage and shall be stored in a clean, dry place protected from flies, dust and other contamination as far as reasonably practicable.
- G. All garbage and trash shall be kept in suitable covered receptacles until properly disposed.
- H. All food and drink shall be clean, free from spoilage and prepared so as to be safe for human consumption and shall be stored as to be protected from dust, appropriate to good food handling practices.
- I. Adequate and convenient hand washing facilities shall be provided, including hot and cold water, soap and clean towels where any food is prepared. No employee shall resume work after using the toilet room without first washing his/her hands.
- J. All employees shall wear clean garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils or equipment.

- K. The premises shall be kept clean and free from litter and rubbish.
- L. No person who is infected with any disease in a communicable form or is a carrier of such disease shall work in any licensed premises or be employed by any licensee. If the licensee or manager suspects that any employee is infected with any such disease or is a carrier thereof, he/she shall immediately notify the Health Officer.
- M. When the Health Officer has cause to believe that the possibility of transmission of infection from any such employee exists, the Health Officer is authorized to require any or all of the following:
  - 1. The immediate exclusion of the employee from all restaurants;
  - 2. The immediate closing of the premises concerned until no further danger of disease outbreak exists; or
  - 3. Adequate medical examinations of the employee and his/her associates with such laboratory examinations as may be required by the Health Officer after consultation.

## **SECTION 9 – LICENSE FEES**

- A. The Town Council shall establish a Schedule of Application and License Fees, which may be amended from time to time.
- B. In order to obtain a new or renewal Victualar's License, an applicant must pay the applicable fee at the time of the application.

## **SECTION 10 - SUSPENSION, REVOCATION OF LICENSE**

- A. Revocations and suspension hearings may be recommended to the Town Council by Town Staff. All appeals and revocation hearings shall be conducted by the Town Council. A Victualar's License may, after notice and public hearing, be suspended or revoked by the Town Council upon a finding that the licensee is unfit to hold a license based on non-compliance with any applicable federal, state or local ordinances, statutes, and/or regulations, including this Ordinance.
- B. At the hearing, the licensee must be given an opportunity to hear the evidence in support of the charge against the licensee, to be heard in the

licensee's own defense, and to cross-examine, alone or through counsel, the witnesses.

- C. If the Town Council is satisfied that the licensee has violated any applicable federal, state or local ordinances, statutes, and/or regulations, including this Ordinance, the Town Council may revoke the license or issue a suspension for any period of time that it considers proper.
- D. Revocation Establishment: A license, when revoked by the Town Council, shall become void immediately following said cancellation of the license and all activities related to the license shall cease immediately.
- E. A Victualar's License may be immediately suspended if the property / business in question is found by the Fire Chief, Code Enforcement Officer, State Health Inspector or local Health Officer to be operating in an extremely unhealthful, unsanitary or unsafe manner so as to create a serious health or unsafe situation which jeopardize the public health, safety and welfare of patrons.
- F. If an establishment's Victualar's License is revoked or suspended by the Town Council the property shall be posted with a Cease and Desist Order / Stop Work Order by the Town's Code Enforcement Officer.

## **SECTION 11 - REINSTATEMENT OF LICENSE**

- A. An establishment may, at any time after the suspension of a Victualar's license, make an application in writing for the reinstatement of the license to the Town Clerk. The Town Clerk shall forward applications to the Code Enforcement Officer, Police Chief, Fire Chief and Finance Director, who shall have a reasonable opportunity to inspect the property (if necessary) and offer input on the application. The Town Clerk shall submit reinstatement applications to the Town Council.
- B. If, after notice and public hearing, the Town Council finds that licensee has corrected the condition(s) that resulted in the license suspension, and that said licensee is in compliance with all terms of this Ordinance, the Town Council may approve the reinstatement of the Victualar's License.
- C. An applicant for a reinstated license shall allow the Code Enforcement Officer, Police Chief, Fire Chief and/or Tax Collector to enter the property at reasonable hours in order to inspect the property for compliance with this Ordinance.



## **SECTION 12 - PENALTY**

- A. Any violation of this ordinance shall be punishable by a fine of not less than three hundred (\$300) dollars for the first offense and not less than five hundred (\$500) dollars for the second and subsequent violation which shall be recovered for the use of the Town of Gorham. Each day that such unlawful act or violation continues shall be considered a separate offense.
- B. In addition to civil penalties, the Town may seek recovery of costs related to the enforcement of this Ordinance, including attorney's fees, and any other legal and equitable remedies as may be available to the Town.

## **SECTION 13 - SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

## **SECTION 14 - APPEALS**

An appeal from any final decision of the Town Council may be taken by any aggrieved party to the Superior Court within 30 days from the date of the decision in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.