

Ordinance # _____

AN ORDINANCE TO AMEND THE TOWN OF BOONE
CODE OF ORDINANCES TO ADD A NEW
CHAPTER 115 “STREET VENDORS”

WHEREAS, the Town of Boone is authorized pursuant to N.C.G.S. §160A-178 to by ordinance regulate, restrict or prohibit the business activities of itinerant merchants and peddlers;

WHEREAS, the Boone Town Council wishes to enact such an ordinance upon due consideration and having considered the recommendations of the Downtown Boone Development Association developed following lengthy deliberation and multiple public comment opportunities;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. The Boone Code of Ordinances is hereby revised to add a new chapter 115 as set forth in the attached Exhibit A to this Ordinance, which is incorporated by reference.

SECTION 2. All provisions of any Town ordinance in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

SECTION 4. This Ordinance shall be effective 15 days following its adoption by Town Council.

Adopted this ____ day of _____, 2023.

Tim Futrelle, Mayor

ATTEST: _____
Town Clerk

EXHIBIT A

Chapter 115. Street Vendors

§ 115.01 DEFINITIONS

For the purposes of this ordinance (“Chapter”), the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ITINERANT MERCHANT. – A person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

MERCHANDISE – Goods, including fresh cut flowers, balloons, food, and any other wares offered for sale or donations.

PEDDLER. – A person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods.

PERSON. – An individual, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit.

SPECIAL EVENT – A town-sponsored or town-sanctioned market, festival, activity, or similar event.

STREET VENDOR – A person who hawks, peddles, sells or offers food or merchandise, and includes both itinerant merchants and peddlers. Musicians (buskers)/performers are not street vendors within the meaning of this Chapter and are not intended to be regulated under this Chapter.

VENDING STAND - A stand, mobile cart, pushcart, wagon, or vehicle used or intended to be used for displaying, transporting or storing articles offered for sale by a vendor. For purposes of this Chapter, vending stands do not include mobile food units (i.e., “food trucks”) and this Chapter is not intended to apply to or regulate lawfully operating mobile food units.

§ 115.02 APPLICABILITY; SPECIAL EVENTS

- (A) This Chapter applies only within the area of the downtown Municipal Services District (“MSD”), which is referred to hereinafter as the “downtown area.”
- (B) This Chapter is intended to regulate conduct on town-owned public property and town-maintained public rights-of-way in the downtown area, including all streets and sidewalks maintained by the town (and regardless of whether or not such public rights of way are within the boundaries of private parcels). This Chapter is not intended to

regulate private property that is not subject to public rights-of-ways, such as private parking lots.

- (C) When special events are held in the downtown area, the town manager (or designee) may, in the town manager's discretion, determine that street vending shall not be allowed under this Chapter but instead will be prohibited or will be allowed only as permitted by the sponsor(s) of the special event. "Special events" for purposes of this provision shall include all town-sponsored parades, Boone Boo, Boonerang, and any other event determined by the town manager to constitute a special event for purposes of this section.

§ 115.03 STREET VENDING ALLOWED IN LIMITED LOCATIONS AND ONLY WITH A PERMIT

It shall be unlawful for any person to sell or to offer for sale, any food, beverage or merchandise on foot or from any vending stand on any public right-of-way, public street, public sidewalk or town-owned property within the downtown area unless:

- (a) The person has obtained a valid and unexpired permit; and
- (b) The person vends from a vending stand located at a site approved by the town manager and otherwise complies with all requirements of this Chapter, including such rules and regulations as may be issued by the town manager (or designee) as provided herein.

§ 115.04 CERTAIN MERCHANDISE PROHIBITED

Street vendors may not sell the following:

- (A) Vendors may not sell second-hand (used) clothing, personal effects, home furnishings, or similar used merchandise. The intention of this prohibition is to avoid sales in the nature of "flea sales" or "yard sales" of used personal items. It is not the intention of this subsection to prohibit sales of true vintage items, but such items must be at least 10 years old and the vendor must keep upon the vendor's person (to display if requested) evidence demonstrating that the items are vintage.
- (B) Vendors may not cook food using a heat source (e.g., boil, roast, broil, bake, or fry), at a vending stand. Re-heating pre-cooked food is allowed if otherwise allowed under health department regulations and any other applicable law.

§ 115.05 VENDOR SITE LOCATIONS, RULES, AND ASSIGNMENT

- (A) Vending shall only be allowed at sites located on the sidewalk in front of the downtown Post Office.
- (B) The town manager (or designee) shall, in the town manager's discretion, determine the specific vending stand locations and dimensions that will be allowed and any other

appropriate rules or limitations that shall govern the usage of such vending sites. In exercising this discretion, the town manager shall see to it that the sidewalks are kept clear for pedestrian use as provided at Chapter 96 of this code, shall protect the planting areas of the Post Office, shall require that vendors provide waste receptacles as necessary for wastes generated by their operations, protect the sightliness of the area, and otherwise exercise the town manager's (or designee's) discretion to protect the public's use and enjoyment of the area. Such rules may include a system for assignment of vending sites (e.g., sign-up and/or lottery) if circumstances (such as excessive competition for sites) warrant. Sites at the post office may be changed or removed from availability in the town manager's discretion, and applicable rules otherwise modified, without advance notice to any permitted vendor.

§ 115.06 PERMIT PROCESS.

- (A) A person wishing to offer merchandise for sale pursuant to this Chapter shall apply to the Town Clerk for a permit on such form(s) as may be required by the Town Clerk.
- (B) The permit shall be for a one-year period from the date the permit is issued.
- (C) The permit fee shall initially be \$100.00 per year, but may be changed as provided by the Schedule of Fees approved by Town Council as part of its annual budget approval process. The fee shall be used for Downtown Boone revitalization and programming.
- (D) A person may not be issued a permit unless the person has provided the following, and a permit may be revoked at any time if the person fails to demonstrate upon request by the town manager (or designee) that the person has provided the following information and approvals and that such are up-to-date and current:
 - a. Contact information, including residence address, mailing address, cell phone number, and email address.
 - b. If applicable, proof of proper registration with the State of North Carolina for collection and remission of sales taxes;
 - c. If applicable, approval from the North Carolina Department of Agriculture.
 - d. If applicable, approval from the Watauga County Health Department.

If questioned by the Town, it shall be the responsibility of the applicant to demonstrate if any of the above requirements are not applicable to that person.

- (E) Permits issued under this section may be superseded during special events as provided at §115.02(C) herein.
- (F) The town manager shall have the authority to deny, suspend or revoke a vendor's permit for any of the following causes:
 - a. Fraud or misrepresentation contained in the application for the permit or, in applying for the permit; failure to provide the information required by this

Chapter; or failure to provide any relevant information sought by the permitting official.

- b. Fraud or misrepresentation made in the course of carrying on the business of vending or failure to remit required sales taxes.
- c. Repeated violation of this Chapter or the rules promulgated by the town manager (or designee) hereunder.
- d. Conviction of the permittee for a felony or misdemeanor related to the vendor's business authorized by the permit.

(G) If a permit is suspended or revoked, the permittee shall have the right to appeal the suspension or revocation to the town manager in writing within ten days of the suspension or revocation. The decision of the town manager shall be final.

(H) If a vendor has a permit revoked, the town manager (or designee) may reject any new application for a permit under this Chapter for a 12-month period from the date of revocation.

§ 115.07 PERMITS MUST BE VISIBLE.

Every vendor operating pursuant to a permit issued under this Chapter shall have such permit visible on the vendor's person or vending site at all times.

§ 115.08 PROHIBITED CONDUCT

It shall be unlawful for a street vendor to:

- (A) Violate any federal, state, county or city law or regulation that pertains to food, beverages, or the selling thereof.
- (B) Fail to permit any lawfully requested inspection by health officials or to comply with any lawful request of a police officer.
- (C) Fail to carry and display at all times of operation the permit issued under this chapter.
- (D) Have a vending stand that is not in compliance with this Chapter or any rules established by the town manager (or designee) hereunder.
- (E) Leave the vendor's site without first picking up, removing and disposing of all trash or refuse remaining from the activities of the vendor or the vendor's customers.
- (F) Sound or permit the sounding of any device which produces a loud and raucous noise or engage in any hawking or harassment for the purpose of attracting the attention of the public to the vending stand.
- (G) Have any advertising other than the posting of prices, the names of goods, and the name and contact information of the vendor.

- (H) Solicit or conduct business with persons in motor vehicles.
- (I) Use a tent or canopy. Only properly anchored single-pole umbrellas may be used, and any such umbrella must not interfere with pedestrian traffic or in any other way pose any threat to public safety.

§ 115.09 ENFORCEMENT

- (A) The provisions of Town Code § 10.99 apply to violations of this chapter except as specifically provided otherwise in this section.
- (B) An initial violation of this Chapter shall subject the responsible person to a civil penalty in the amount of \$25.00. In the event there is more than one violation within any one-year period by the person, then the civil penalty shall be increased for each additional violation over such period, as follows.
 - 1. Second offense within one year: \$50.
 - 2. Third offense within one year: \$100.
 - 3. Fourth and any subsequent offense within one year: \$200.

Once the one-year period has run from the first violation, the next violation shall be considered to be a first violation for the purposes of establishing a new one-year period.

- (C) A person acting in violation of this Chapter may be ordered by a Town police officer to cease the person's activities and vacate the vending site. Such person must obey the order of the police officer or is subject to separate and distinct citation for violation of this Chapter and/or charges for resisting the lawful orders of a police officer.