

Exhibit A

**ORDINANCE FOR THE REGULATION OF THE  
DOWNTOWN IMPROVEMENT DISTRICT**

Pursuant to the authority of Chapter 1, Section 104 (L) of the Town Charter, the Select Board of the Town of Middlebury hereby enacts the following ordinance establishing a special assessment district to be called the Downtown Improvement District (hereinafter referred to as “the DID” or “District”); defining the District; and establishing the regulations for governance of the District.

**ARTICLE I – Purpose**

To establish a special assessment district for downtown improvements, and to provide additional taxing authority to the Select Board, revenues from which shall be designated funds to be utilized in providing partial financing, and to leverage financing from other sources, for implementing public improvements and benefiting properties in the District.

**ARTICLE II – Boundaries and Composition of the District**

Section 201. The District shall be comprised of all non-residential real properties (hereinafter referred to as “assessed property”) located in the area shown on the map in Appendix A. In the case of a property or structure containing both residential and non-residential uses, only the portion used for non-residential purposes shall be considered part of the District.

A general description of the included properties and current businesses at the district limits is as follows:

- On Seymour Street, to include 52-60 Seymour St. (Danforth Pewters);
- On Exchange Street, to include 33-105 Exchange St. (rk miles);
- In the Elm Street area, to include 21 MacIntyre Lane (Middlebury Beverage & Redemption Center and 30 MacIntyre Lane (Pool World) and 3 Elm St (Greg’s Market and properties on both side of Elm Street extending to North Pleasant St;
- On Route 7-North Pleasant Street to include 57 North Pleasant St and 24-25-27 Stewart Lane and (Swift House Inn Properties) and 60 North Pleasant St (Maplefield’s);
- On Seminary Street, to include 14 Seminary St (Remora, Inc and Addison County Regional Planning Commission);
- On Washington Street, to include 8-10 Washington St (Shaw’s Supermarket), 14 Washington St (Milne Travel Agency, and 24 Washington St (Off Da Hook LLC);
- On Court Street, to include 49 Court St (Sunoco – Rexbo Development Inc) and 50 Court St (Somaworks & J&C Enterprises.)

- On the north and west, to include Middle Seymour St. and Willard St. and Maple St. properties (the Addison Independent/Lynn Publications and all of Marble Works);
- On Mill Street, to include properties on both sides up to 12 Mill St. (Schmitter);
- On College Street, to include 54-56 College St.; (Carrara-Sater properties)
- On Main Street, to include 94 Main St. (Park) and 91 Main St. (Middlebury Eye Associates);
- On Main St/Bakery Lane, to include 89 Main St. (Counseling Service of Addison County) and 25 Bakery Lane (Mr. Ups Restaurant –ONEil-Buck Realty Holdings LLC);
- Along the Cross St. Bridge and Cross Street, it includes the properties on both sides extending to Court St/Route 7.

The Town Lister’s Office shall maintain a current list of DID assessed properties.

**Section 202. Definitions**

“Residential” properties include one family dwellings, two family dwellings, multiple family dwellings (apartments, townhouses and residential condominiums are included in this definition), rooming houses, and home occupations, as those terms are defined in the Middlebury Zoning Regulation.

“Non-residential” properties are all other properties not included in “residential” properties. For purposes of this ordinance, a tourist home or bed & breakfast establishment is included as non-residential. Non-residential properties shall include utilities within the District boundaries, including land and improvements, but shall not include utility poles.

“Assessed Property” shall include only real property in the District as defined by the taxing sections of State statutes.

**ARTICLE III – Use of Funds**

**Section 301.** Revenues generated from the District shall be used for implementing a broad range of major and minor public improvements located on public and private property within the District and providing a benefit to the assessed properties within the District. Determination of said projects shall be made by recommendation of the Commission, as described in Article IV, the Select Board and then voted by the Select Board as part of the Capital Improvement Plan.

**Section 302.** Annually, 15% of District revenues shall be paid to the Better Middlebury Partnership (BMP), its successors and/or assigns, for services to secure grants for downtown improvements and other activities benefiting the district.

**Section 303.** Up to 10% of the annual revenues shall be used for the maintenance of District improvements which have been funded by District Tax Assessments or other funding of the District.

#### **ARTICLE IV – Downtown Improvement District Commission (DIDC)**

**Section 401.** A Downtown Improvement District Commission, appointed by the Select Board, shall identify and develop the budget for improvements and make recommendations to the Select Board for inclusion during the annual Town budget process. The Commission shall also have responsibilities for handling appeals as outlined in Article VI.

**Section 402.** The Commission shall consist of six members with representation as follows: a) three (3) members shall, at the time of appointment and during their respective terms, own or be agents for assessed property in the District; b) one (1) member shall, at the time of appointment and during his/her term, own or manage a business in the District; c) one (1) member at large who is a legal resident of the Town of Middlebury; d) one (1) Select Board member.

**Section 403.** The Select Board shall make appointments for three-year terms; in order to achieve staggered terms and maintain continuity on the DIDC the Select Board may make appointments for shorter terms or to fill a vacancy for an unexpired term.

**Section 404.** The Select Board may remove Commissioners for cause, but only after a public hearing duly warned, and vote of the Select Board is taken.

**Section 405.** The Commission shall elect from its own number a Chair and Vice Chair. If there are an even number of Commissioners voting, the Chair may vote to make or break a tie.

**Section 406.** The Commission shall meet as determined by the majority of its members, but shall, at a minimum, hold one duly warned public hearing prior to making annual recommendations to the Select Board to correspond with the Town budget preparation, which begins in the fall of each year.

**Section 407.** Projects submitted to the Select Board may be approved as is, or with deletions. The Select Board, however, shall not make additions to or substitutions from the recommended list submitted by the Commission, without prior Commission review and approval.

**Section 408.** The Town shall administer improvements made with funds generated from the District. Such improvements shall be subject to the purchasing policies and bid procedures followed by the Town.

## **ARTICLE V – Tax Assessment**

**Section 501.** District taxes are charges levied upon the owners of taxable real properties located within the District, as defined in Article II, during the levy period set forth in Article VII. Taxes so generated shall be used for the purposes set forth in Article III.

**Section 502.** The DIDC should annually recommend to the Select Board a budget for downtown projects for the ensuing year. The tax rate shall be determined by the Select Board by dividing the amount to be raised by taxes, by the total value of the assessed property in the Grand List in the District subject to the District tax. Under no circumstances shall the amount raised by taxes in the District exceed \$100.00 per \$100,000.00 of assessed value.

**Section 503.** In the first year of a DID assessment, the Board of Listers shall send a notice in writing of the value of the property to be assessed to the owner of record as of April 1. In subsequent years the Town will not send a notice unless the value of the assessed property on the Grand List or the owner of record has changed.

**Section 504.** The Select Board shall set the District tax rate at the same time that the Board sets the Town tax rate.

**Section 505.** A separate tax bill in the name of the owner of record in the Town Clerk's office shall be mailed at the same time as other Town tax bills are mailed.

**Section 506.** Payment shall be due on the same date that other taxes are due and in the installment format as may be determined by the voters at Town Meeting.

**Section 507.** District taxes shall be a lien on the properties when assessed and shall continue until the tax is paid, or the lien is otherwise discharged by operation of law. In addition this assessment shall be subject to penalties and interest as are charged to any tax payments not paid on the due date.

**Section 508.** The Town shall collect District taxes following the procedures established in Town Charter, State Statutes, and procedures adopted by the Select Board.

**Section 509.** In the case of any property used for both residential and nonresidential purposes within the District as of each April 1, the Board of Listers shall adjust the listed value for the purposes of determining the DID District Tax under this section to exclude that portion of the property used exclusively for residential purposes. The method for determining the adjusted listed value of the non-residential use portion by applying the percentage of square footage of the building in non-residential use to the full listed value of the building. The Board shall determine

the adjusted Grand List value of the portion of the property and give notice of the same as provided under Chapter 131 of Title 32 of the Vermont Statutes (4401-4452). In subsequent years if no change has taken place then no notice shall be sent.

## **ARTICLE VI – Appeals**

### **Section 601. Grievances**

Any property owner may file a grievance with the Board of Listers and appeal the decision of the Board as provided for in Title 32 VSA Chapter 131.

### **Section 602. Other Appeals**

a. Appeals as to determination related to the Tax District only, i.e. number of square feet included for an assessed property which is both residential and non-residential, shall be filed with the Downtown Improvement Commission within thirty (30) days of the assessment (the Town Boards, State Board and Superior Court shall have no jurisdiction for such appeals).

b. An aggrieved property owner may also appeal such assessment to the Downtown Improvement District Commission, if the owner is a non-profit, tax exempt organization and has received an Internal Revenue Service letter of determination of such status pursuant to section 501© of the Internal Revenue Code. The Commission, in making a determination of whether such an organization should be exempted from the Tax Assessment of the District, shall consider the following factors:

- 1) Whether the owner will receive any benefit from the improvements to the District; or
- 2) Whether the benefits are likely to exceed the tax assessment; or
- 3) Whether some portions or all of the building (or none) will receive some benefit related to the activities or use of that portion or all of the building (an allocation may then be made as to the assessable portion); or
- 4) Whether the activities or uses of the building are similar to other activities or uses of non-tax exempt owner (i.e. retail sales are conducted on the premises); or
- 5) Other factors which would reflect on the cost/benefit issues for non-exempt owners, as well as an owner claiming such tax-exempt status.

### **Section 603. Status of Collection of Taxes During Appeal**

The filing of any appeal of the determination of the Listers, the Civil Board or the Downtown Improvement District Commission and tendency of the appeal shall not vacate the lien on the property assessed, and the owner shall pay the District taxes and continue to pay the said taxes as they become due.

#### **ARTICLE VII – Effective Dates of Ordinance and Levy Period**

This Ordinance shall take effect forty days from date of adoption by the Select Board and shall be effective until repealed. In the event that the levy period expires prior to being extended, the Ordinance shall remain in effect, but no district taxes shall be imposed hereunder unless and until the levy is reinstated pursuant to the amendment procedures of Section 801.

The existing seven-year levy period in place under the April 27, 2010 amendment to this Ordinance is hereby extended for an additional seven-year period beginning on the first day of the Town of Middlebury FY2018 tax year (July 1, 2017 through June 30, 2018) and ending on the final day of the FY2025 tax year (July 1, 2024 – June 30, 2025).

#### **ARTICLE VIII – Amendment Process; Addition and Removal of Properties**

**Section 801.** Amendments to Ordinance. Any amendments to this Ordinance, including but not limited to any extension of the levy period set forth in this Ordinance, reinstatement of the levy if it expires prior to being extended, alteration of the district boundaries as defined in Section 201, and alteration of the definitions of which types of properties are subject to the levy as defined in Sections 201 and 202, shall only be effective if adopted in accordance with Sections 104 (L) and 107 of the Town Charter and all other applicable laws.

#### **Section 802.** Addition or Removal of Properties from District Based on Changes in Use

a. The addition or removal of properties from the District based on changes of use shall take place annually as set forth in this Section and shall not require an amendment to this Ordinance.

b. The Lister's Office shall review all the properties within the district boundaries as of April 1 in any tax year and shall add or remove properties according to the following procedure:

1) If the property has been converted from residential to non-residential use, (in whole or part) the owner shall be notified by certified mail that the affected portion of the property has now become subject to the District tax and will receive the tax bill in June of that year for the next fiscal year.

2) If the property has been converted from non-residential to residential use (in whole or part), the owner shall be notified by certified mail that the affected portion of the property, as long as it remains in residential use, will not be subject to the tax.

3) Consistent with Sections 502, 503, and 504 above, the DID Tax District Grand List will be adjusted to reflect the alteration of the District.

c. Appeals to inclusion in the District shall be filed with the Downtown Improvement District Commission consistent with Section 602 of this Ordinance.

### **ARTICLE IX – Severability**

If any section or subsection of this ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such judgment shall not offset the constitutionality or validity of the remaining sections or subsections.

Adopted: January 23, 1996; Effective March 3, 1996

Amended: August 12, 1997; Effective September 22, 1997

Amended: December 9, 1997; Effective January 18, 1998

Amended: August 27, 2002; Effective October 7, 2002

Amended: April 27, 2010; Effective June 6, 2010

Amended: November 14, 2017; Effective December 24, 2017

5) Other factors which would reflect on the cost/benefit issues for non-exempt owners, as well as an owner claiming such tax-exempt status.