

**TOWN OF MIDDLEBURY****AN ORDINANCE FOR THE REGULATION OF ALCOHOL AND CANNABIS****AND CONTROL OF PUBLIC NUISANCES****Article I – Purpose**

Pursuant to Title 24A VSA Appendix, Chapter 3-127 Section 104(10) and Title 24 VSA, Chapter 59, Section 1971, the Selectboard of the Town of Middlebury hereby adopts ~~an~~ this Ordinance for the regulation of alcohol and cannabis and the control of prevention of public nuisances, protect the safety, health, and welfare of residents of the Town of Middlebury, to prevent and abate disturbances, and disorderly assemblies to provide for the enforcement of and penalties for violation. There is a need to protect the safety, health, and welfare of residents of the Town of Middlebury, More specifically, this Ordinance provides for local licensing of alcohol and cannabis establishments to complement state licensing under Title 7 VSA and aims to control unlawful and nuisance activity and its detrimental effects on the community by:

- a. Regulation of businesses that sell and/or serve alcohol and cannabis or cannabis products;
- b. Regulating alcohol or cannabis establishments and the conduct of persons consuming alcohol or cannabis to prevent disturbances or unsafe conditions or nuisances that unduly and adversely affect adjacent properties or businesses or the public's use of public places;
- c. Regulating undue noise and other disturbances to the public or to nearby properties or businesses; and

d. Regulating and eliminating the proliferation of properties that harbor occupants who disrupt the peace and tranquility of the surrounding community; and

~~e. Other laws and ordinances do not adequately control~~ Controlling chronic unlawful or public nuisance activity or and its detrimental effect on the community where such chronic activity occurs.

## **Article II – Definitions**

As used in this ordinance, the following terms have the meaning indicated, unless the context clearly requires otherwise:

1. ABATE OR ABATED – means to bring a halt, eliminate, put a stop to.
2. PROPERTY – Any parcel of land, building, dwelling unit, social house, rooming house, rooming unit, tent, trailer, recreational vehicle, camping site or other structure or place within the Town of Middlebury occupied either temporarily or permanently by a human being. For purposes of this Ordinance, each parcel shown on the Middlebury tax maps shall constitute a separate property. Any buildings located on a property shall be considered part of that property unless they are under separate ownership, in which case the building and the underlying land shall be considered separate properties.
3. NOISE VIOLATION – A violation of the Town of Middlebury Ordinance for the Regulation of Noise, as confirmed by a Town Police Officer and documented in the Police Department records. For purposes of this Ordinance, as provided below, multiple violations of the Ordinance for the Regulation of Noise occurring on the same property within an eight (8) hour period are considered a single Noise Violation. Four or more

such Noise Violations in a 180-day period is a public nuisance violation under this Ordinance.

4. PUBLIC NUISANCE – An occurrence of four (4) or more separate ~~Noise~~ violations occurring on the same Property within a one hundred eighty (180) day period. A public nuisance will be deemed to continue until a period of 180 days has elapsed with no further ~~Noise~~ violations, as provided in Section ~~301~~ 304.

5. OWNER – The business establishment owner, or the person, persons, corporation, partnership, association, trustees, or other entity having the legal title or the beneficial interest in a property, as their interest is recorded in the land records of the Town of Middlebury.

6. NOTICE AND ORDER – A notice given pursuant to Section 401 of a violation of this Ordinance ~~for the Control of Public Nuisances~~ with an order to abate and otherwise comply with ~~the ordinance issued in accordance with this chapter~~ this Ordinance.

7. ALCOHOL OR CANNABIS ESTABLISHMENT - means any business or other entity, under the regulatory authority of the Town consistent with Title 7 VSA, that sells or serves alcoholic beverages, or cannabis or cannabis products, or is a cannabis integrated licensee, within the Town of Middlebury.

8. CANNABIS OR CANNABIS PRODUCTS – shall mean cannabis and cannabis product as defined in 7 VSA Section 831.

9. PUBLIC PLACE - shall mean bars and lounges, retail stores and other areas and places of public accommodation and public places as defined in 7 VSA Section 831(6).

Under the authority of the Middlebury Town Charter specifically in the Town of Middlebury, public places shall further include any public building or public property,

and any public or private street, highway, sidewalk, pathway or trail, park or recreational place open to and used by the public. This includes private property used as public parks such as the MarbleWorks / Middlebury Falls and downtown riverfront areas.

### **Article III – Regulation**

Section 300 – Regulation of alcohol and cannabis in public places.

1. Alcohol shall not be consumed in any public place, except in accordance with State liquor control laws and for licensed establishments and for catering that is permitted or licensed by the Town Liquor Control Commissioners in accordance with Title 7 VSA and the Town of Middlebury Ordinance for restricting Alcoholic Beverage Use on Town Property.

2. Cannabis or cannabis products shall not be consumed in any public place. See 7 VSA Section 833 and the definition of public places in this Ordinance. Consumption includes smoking or vaping or otherwise injecting cannabis products such as edibles. Cannabis or cannabis products possessed unlawfully in violation of Title 7 VSA may be seized by law enforcement and is subject to forfeiture.

Section 301 – Licensure of Establishments

1. Establishments That Sell or Serve Alcoholic Beverages.

a. The Middlebury Liquor Control Commissioners shall consist of the SelectBoard.

b. Alcoholic Beverage licensing shall be administered in accordance with 7 VSA

Chapters 7 and 9.

*c. (here we could add in Middlebury's current procedures for annual licensing of bars and places that sell alcohol and for catering permits and public events)*

2. Licensure of Cannabis Establishments (retailers and integrated licensees).

a. The Town of Middlebury voted on March 2, 2021 to permit the operation of cannabis establishments and integrated licensees in the Town of Middlebury. In accordance with 7 VSA Section 863 (a)(2), if, at a future Town meeting the Town votes to rescind this, such rescission shall apply only as to new establishments; any then-existing, prior-licensed retailers and integrated licensees shall continue to be subject to annual licensure under this ordinance.

b. The Middlebury Cannabis Control Commission (Middlebury Board) shall consist of the SelectBoard members.

c. Cannabis retailers and integrated licensees approved by the VT State Cannabis Control Board established under 7 VSA Chapter 33 shall annually apply to the Middlebury Board for a local operating license.

d. The application submitted to the Middlebury Board shall include all information required to be submitted to the State Board and such additional information as may be reasonably required by the Middlebury Board or Police Chief to determine compliance with this ordinance. The application shall also include certification from the Town Zoning Administrator that the cannabis establishment is in an approved location and on a property that is in compliance with the Middlebury Zoning and Subdivision Regulations. Changes to a local application arising during a subsequent State licensing process shall be submitted to the Middlebury Board, which shall act on the amended application in a manner that is consistent with the State License and this ordinance.

e. Conditions may be attached to a local license to ensure compliance with 7 VSA Chapters 31 and 33 and this ordinance. A local license may be suspended or revoked by the Middlebury Board for violation of any such conditions and in accordance with rules as provided in 7 VSA Section 863(b).

f. No cannabis **retail** establishment shall be licensed that is:

(i) located on Court St., **Creek Rd.**, Middle Rd., Water St. or Charles Ave.; or

(somewhat covers the public schools and walking routes nearby (leading to them))

(ii) within 500\_?\_\_\_ feet of a public or private school or child care facility existing at the time of first license application.

(iii)

~~(In lieu of—or until enactment of—a zoning overlay map of prohibited areas)~~

g. Advertising, signage and exterior appearance of the establishment shall comply with all Town of Middlebury Zoning and other Town regulations.

#### Section 302 – Standards for Alcohol and Cannabis Establishments.

1. Prior to issuance of a local license for an alcohol or cannabis establishment, the Police Chief and Fire Chief shall inspect the establishment to determine whether there will be adequate fire safety, **emergency exits** and security **for** the premises.

2. No alcohol or cannabis establishment shall be operated in a manner that causes or results in:

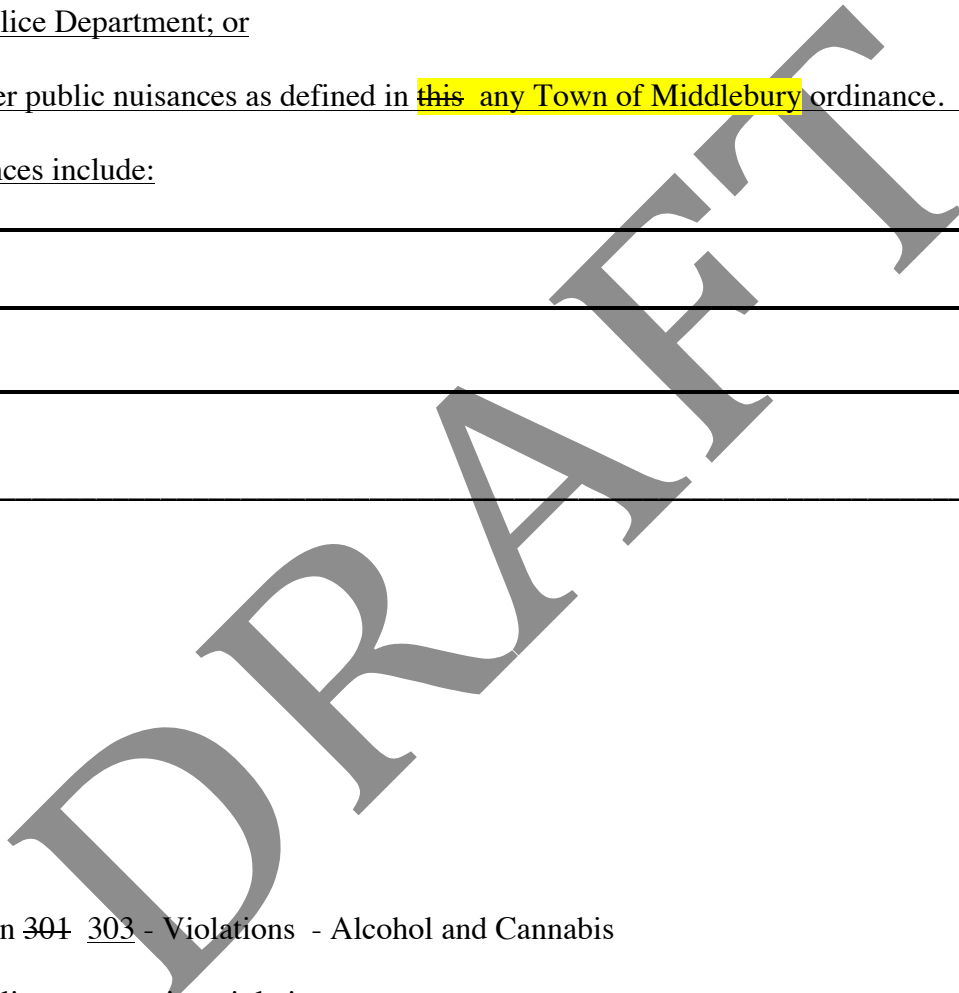
a. odors or other emissions, noisy gatherings, or behavior of impaired persons associated with the establishment which are disturbing to other businesses, adjacent properties or to people residing on nearby property or **to** areas open to the public;

b. repeated responses to the establishment from law enforcement or other (State Health Dept or Fire Safety) code enforcement officers (more than 4 \_\_\_\_\_ times in any \_\_\_\_\_ 180-day period);

c. repeated disruption to the free passage of persons or vehicles in the neighborhood (more than 4 \_\_\_\_\_ times in any \_\_\_\_\_ 180-day period) as reported to and observed by the Police Department; or

d. other public nuisances as defined in this any Town of Middlebury ordinance. Public nuisances include:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Section ~~301~~ 303 - Violations - Alcohol and Cannabis

1. Public consumption violations.

a. Alcohol possession / open container consumption on Town Property violations shall be punished in accordance with Section VII of the Middlebury Ordinance Restricting Alcoholic Beverage Use on Town Property.

b. Cannabis public place open consumption violations shall be punished in accordance with 18 VSA Section 4230a.) 7 VSA Section 833)

2. Alcohol and cannabis establishment violations.

a. No person shall operate an alcohol or cannabis establishment without a valid license.

b. The Middlebury Local Control Commissioners may, consistent with Title 7 VSA and this Ordinance, suspend or revoke a liquor license or catering / public event permit for a violation of any local or State regulations or conditions, or violation of a permit or conditions of any entertainment permit or ordinance regulating public nuisances. 7 VSA Section 167.

c. The State Board shall have the authority to suspend or revoke a cannabis establishment license. 7 VSA 882

d. The Middlebury Police Department Chief shall establish procedures for warnings and formal notification of violations, and reporting of violations to the Middlebury Board/Local Control Commissioners and to State authorities.

Section 304 - Public Nuisance Violations

1. No business owner or owner of a property shall commit, conduct, promote, facilitate, permit, fail to prevent, or otherwise let happen, a public nuisance on that owner's property.



2. The initial occurrence of a public nuisance on a property (~~i.e., the fourth Noise Violation within a 180-day period~~) shall constitute a violation of this Ordinance-  
~~(hereafter, a “Nuisance Violation”). Such a violation shall be~~ punishable as a first offense under Section 501. As examples, repeated disruption or disturbances under Section 302 (2)(b) or (c) above, or under the Middlebury Noise Ordinance, the fourth violation in a 180-day period under that ordinance shall constitute first violations under this Ordinance punishable as a public nuisance first offense under Section 501.
3. Once a public nuisance has occurred on a property, each subsequent ~~Noise Violation violation~~ occurring on that property within 180 days of the last ~~Noise Violation~~ on the property shall constitute an additional ~~Nuisance Violation~~ violation. Each such violation shall be punishable as a second, third, or subsequent offense under Section 501.
4. Once a public nuisance has occurred on a property, if 180 days elapse with no further ~~Noise Violations~~ violations occurring on a property, then the public nuisance shall be deemed to have abated, and a new public nuisance will not be deemed to have occurred unless three new ~~Noise Violations~~ violations occur within any 180-day period.
5. Violations shall be evaluated separately for each property. For example, if an owner owns two properties, and two ~~Noise Violations~~ violations occur on each property within a 180-day period, a public nuisance shall not be deemed to have occurred because there were not four ~~Noise Violations~~ violations on a single property.

## Article IV – Notices and Orders

### Section 400 – Notice and Warning

Within five (5) working days of a ~~Noise Violation~~ violation occurring on a property, the Police Department or the Town Manager will cause to be served, in accordance with Section 402, a notice of warning to the offending person(s), business or property owner, containing the following information:

- a. the date and times of each ~~Noise Violation~~ violation;
- b. the person or persons, business or property owner against whom action was taken to abate the ~~Noise Violation~~ violation;
- c. the nature and extent of the ~~Noise Violation~~ violation;
- d. a notice ~~to the owner~~ that four separate ~~Noise Violations~~ violations occurring on the property within a 180-day period will constitute a public nuisance and a violation of this Ordinance;
- e. a request ~~to the owner~~ to take all necessary steps to avoid future ~~Noise Violations~~ violations;
- f. ~~a copy of~~ Information on where they can view the Ordinance for the Regulation of Noise or other relevant ordinances concerning public nuisances.

### Section 401 – Notice of Violation and Abatement Order

1. Within ten (10) working days of any ~~Nuisance Violation~~ violation, ~~as defined in Section 301, unless an order by the Police Department is immediately and satisfactorily complied with and the offense is abated,~~ the Police Chief or the Town Manager shall

cause to be served on the offending person, business or property owner, in accordance with Section 402, a Notice of Violation and Order to Abate the Public Nuisance. The Notice and Order shall include:

- a. copies of ~~the~~ any notices previously sent pursuant to Section 400 for all ~~Noise Violations~~ violations occurring within the last 180 days;
- b. a new notice pursuant to Section 400 for the latest ~~Noise Violation~~ violation that has ~~given rise to a Nuisance Violation~~;
- c. a notice to the business or property owner ~~that the building is a Public Nuisance and that a Nuisance Violation~~ public nuisance violation has occurred;
- d. (reserved)
- e. an order ~~to other owner~~ to abate the nuisance immediately; and
- f. ~~a copy of~~ information on where they may view the Ordinance for the Control of Public Nuisances and other relevant ordinances.

#### Section 403 - Delivery of Notices

Any notice required to be made ~~to an Owner~~ under this Ordinance shall be deemed effective if hand-delivered, mailed by certified mail, return receipt requested, or sent by overnight delivery with proof of delivery, to the person, business or property owner at ~~the~~ their last known address or address listed in the current Town of Middlebury Grand List.

Notice need not be made separately to multiple involved business or property owners unless there is more than one address listed in the Grand List. Any notice mailed or delivered to any person or business or property owner as provided herein shall be

effective as to the owner identified in the notice notwithstanding such owner's refusal to accept delivery of the notice and notwithstanding any failure of any other person or owner to actually receive notice.

#### Section 403 - Affirmative Defenses; Suspension of Enforcement.

1. The Town shall suspend enforcement of any ~~Nuisance Violation~~ **violation** if the Owner (a) confers with the Chief of Police as required in Paragraph 2 below, and (b) demonstrates that the person, business or property owner has made diligent efforts to abate the Public Nuisance on its property, as defined in Paragraph 3 below.
2. The offending person, business or property Owner or Owner's representative shall meet with the Chief of Police or his or her designee, in person or by telephone, within ten (10) days of receipt of the Notice and Order to Abate or at a time mutually agreed to be the Chief of Police and the Owner or owner's representative, to identify ways to eliminate the public nuisance.
3. For purposes of this Section, the requirement to make "diligent efforts" will be satisfied by either of the following:
  - a. The person, business or property owner initiates formal no trespass, eviction proceedings or other similar legal means, beginning prior to the issuance of the Nuisance Violation and continuing until all of the occupants whose conduct gave rise to the Violation have vacated the premises; or
  - b. Beginning prior to the issuance of the Nuisance Violation, the person, business or property owner undertakes and pursues with due diligence, considering the nature and extent of the separate violations, reasonable means to avoid a recurrence of similar

violations on the parcel by the present and future persons, business owners or tenants or occupants of the parcel. The cited person, business or property owner will be responsible for submitting monthly progress reports to the Police Department as evidence of its diligent efforts. If the person, business or property owner ceases to make diligent efforts (for example, by discontinuing or failing to actively pursue legal proceedings), then enforcement shall resume and the Town may pursue any enforcement actions allowed by this Ordinance;

5. Steps taken by ~~an~~ a person, business or property owner to abate a public nuisance after receiving a Notice of Violation and Abatement Order may be taken into account by the Town in imposing fines and other abatement actions, but shall not entitle the person, business or property owner to automatic suspension of enforcement in accordance with Paragraph 1 above.

**Article V – Civil Penalties**

Section 500 – Designation as civil penalties.

Violations of the provisions of Article III are civil violations per Title 24, VSA Section 1974a and other applicable laws.

Section 501 – Schedule of Penalties

Violation	Fine	Waiver
First Offense	\$250-\$1,000	\$250
Second Offense	\$500-\$1000	\$500
Third and Subsequent Offenses	\$750-\$1,000	\$750

## Section 502 – ~~Civil~~ Enforcement Remedies

1. The Town may enforce any order or decision issued in accordance with this chapter that is not complied with by the person or business to whom the order or decision is issued by any method available in law, including but not limited to lien, foreclosure, sale of real and personal property or a civil action. In addition to seeking enforcement of an order or decision, a civil action may be instituted for injunctive and compensatory relief.

## Section 503 - Cost Recovery

1. In addition to and independent of any fines provided for under Article 501, the Town may collect from the Owner any expense related to efforts by the Town to abate a public nuisance. This includes the cost of responding to any noise complaints at the building, costs related to the prosecution of the offenders, administrative costs, court fees, and legal fees.

2. A cost-recovery fee schedule, **when** approved by the Board of Selectmen, is **shall be** an attachment to this ordinance.

## **Article VI – Injunctions**

### Section 601 – Injunctive Remedies

In addition to and independent of the other remedies provided for by this Ordinance, the Town may, pursuant to Title 24 Chapter 61, Section 2121, seek injunctive relief against the person, business, property and the owner as appropriate to abate the nuisance, which may include, to the extent authorized by law, eviction of any occupants and the closure of the business or building to occupation for a period not to exceed one (1) year.

**Article VII – Interpretation and Separability**

Section 701 - Conflict with Other Standards

In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this ordinance are **at variance with covered by** the requirements of any other lawfully adopted rule, regulation, or ordinance, the most restrictive or **the that** imposing the higher standard shall govern.

Section 702 - Severability

Should any court of competent jurisdiction determine any provision of this ordinance to be invalid, such jurisdiction shall not affect the validity of the ordinance as a whole or any part other than the part to declared to be valid.

Section 703 - Effective Date

This ordinance or amendments thereto, shall become effective 40 days after adoption consistent with Section 107 A-D of the Town Charter.

---

Adopted: 10/27/2015; Effective: 12/6/2015

Amended \_\_\_\_\_