

## TOWN OF MIDDLEBURY

### An Ordinance for the Regulation of Public Assemblages

Pursuant to the authority of 24 V.S.A. 2291, and Section 104(b),(f),(i) and (j) of the Charter of the Town of Middlebury, the Selectmen of the Town of Middlebury hereby enact the following ordinance:

#### Section I – Definitions

101. **Public Assemblage:** means any parade, march, ceremony, show, exhibition, pageant, or procession of any kind, or any rally or demonstration, or any similar display in or upon any public place which constitute a public nuisance, or present a clear and present danger of substantial injury or harm to persons or property, or an imminent threat to the public health or safety.
102. **Public Place:** means any street, highway, sidewalk, park, building, or other place owned by, or under the authority and control of the Town.
103. **Public Nuisance:** means an assemblage whose size, location, duration, or nature is such that: (a) it will substantially impair, restrict, or alter the normal and customary use of a public place, or (b) it will occupy, block, restrict, or deny to the public the normal and customary use of a public right of way, or (c) it will require the diversion of so great a number of police officers as to interrupt normal police protection of the Town, or (d) interfere substantially with normal fire-fighting and ambulance service to the Town.
104. **Person:** includes a corporation, partnership, unincorporated association, or any other legal entity.
105. **A First Class Permit:** means a permit to hold a public assemblage in a public place where the assemblage is a normal and customary use of the public place.
106. **A Second Class Permit:** means a permit to hold a public assemblage where, without appropriate arrangements, such as assemblage can reasonably be expected to constitute a public nuisance.
107. **A Third Class Permit:** means a permit to hold a public assemblage which, without appropriate arrangements, can reasonably be expected to present a clear and present danger of substantial harm or injury to persons or property, or an imminent threat to the public health and safety.
108. **Club –** organization which provides dining facilities on premises and also serves alcoholic beverages to a restricted membership. Club is more specifically defined in Title 7-Chapter 1 of the Vermont State Statutes.

- 109. Entertainment – Any live public performance, dancing, and/or showing of motion pictures.
- 110. Hotels – a first class hotel as determined by the liquor control board.
- 111. Liquor License (first class) – a license granted by the control commissioners permitting the licensee or seller of malt or vinous beverages to sell to the public for consumption only on the premises for which the license is granted.
- 112. Restaurant – space in a suitable building, approved by the liquor control board, occupied, used, maintained, advertised or held out to the public to be a place where all meals are served on a regular basis. Such space being provided in the judgment of the board with adequate and sanitary kitchen and dining room capacity and having employed therein such number and kinds of employees as the board may be regulation prescribe for preparing cooking and serving suitable food for its guests or patrons.
- 113. An Entertainment Permit – any owner or operator of a club, hotel, restaurant or anyone who is required to obtain a First Class Liquor License shall be required to obtain an Entertainment Permit prior to the offering of live entertainment on the premises. School, and universities, Service Clubs (clubhouse) and religious organizations or orders (i.e. American legion, VFW, Knights of Columbus, et al) shall be exempt from this requirement.

Section II. – Permit Required.

- 201. A person shall not organize, sponsor, promote, participate in, aid, form, or start a public assemblage without a permit, as required by this Ordinance.
- 202. A person shall not provide live entertainment on the private premises of such person without an Entertainment Permit, as required by this Ordinance.
- 203. The provisions of this ordinance shall not apply to a permanent place of worship, a stadium, athletic field, arena, auditorium, theater, or similar place, nor to any other permanently established place of assembly which regularly holds meetings, entertainment, sports, or similar activities, providing that the assembly in such place does not exceed the carrying capacity of the place, and is a normal and customary use of the place.

Section III – Application Procedure

- 301. A person wishing to hold a public assemblage shall file with the Town Manager an application containing: (a) the name, address, and phone number of the applicant and property owner; (b) the hour, date and estimated duration of the assemblage (c) the location of the public place or other place of the assemblage (d) the purpose of the assemblage and (e) the applicant’s proposed arrangements for parking, crowd control,

traffic safety, and such other measures as will maintain the security and safety of the persons involved in the assemblage and the general public.

302. The application shall be filed at least fifteen days prior to the assemblage. However, the Town Manager may waive this requirement if he/she determines upon receipt of the application that the applicants' arrangement for safety and control of the assemblage are adequate.
303. If the Town Manager determines that a public assemblage is to be held which can reasonably be expected to require a Second or Third Class permit, and that no application has been made therefore, he/she shall request the person organizing or sponsoring such assemblage to file application for an appropriate permit. Such request shall be prima facie evidence that a permit is required under Section 201 of this Ordinance.

#### Section IV – Official Action on the Permit

401. The Manager shall determine whether the applicant requires a First, Second, or Third Class Permit. He/she shall:
- a) Grant a First Class Permit at least 5 days prior to the assemblage unless he/she find that:
    - 1. a Second or a Third Class Permit will be required, or
    - 2. the hour, day and location of the assemblage will conflict with a previously scheduled assemblage.
  - b) Grant a Second Class Permit at least 5 days prior to the assemblage unless he/she finds that:
    - 1. the arrangements offered by the applicant for the maintenance of safety and control are inadequate to prevent personal injury or destruction of property.
  - c) Refer any application requiring a Third Class Permit to the Selectmen, who shall hold a hearing on the application, at which the application may be present. The Selectmen shall grant a Third Class Permit only if the arrangements for control and safety, whether proposed by the applicant, or attached as conditions by them, are sufficient to protect the public safety, and the safety of the persons involved in the assemblage.
402. If the Town Manager does not grant or deny the application for a permit under Section 401(a) and (b) of this ordinance within not less than 4 days prior to the assembly date, he/she shall be deemed to have granted the permit on the terms requested. If the Selectmen do not grant or deny the application for a permit under Section 401(c) within not less than 4 days prior to the assembly date, the applicant shall consider the permit to have been denied.

403. The Town Manager under Section 401(a) and (b) and the Selectmen under Section 401(c) may attach such conditions to a permit as will best protect the public safety and the safety of the persons involved in the assemblage, including but not limited to:
- (a) an alternate tie or location for the assemblage,
  - (b) the installation of temporary sanitation facilities or provisions for emergency medical services,
  - (c) effective crowd and traffic control procedures,
  - (d) seating, standing or marching arrangements,
  - (e) surety bonds and liability insurance.
404. The Town Manager may revoke or amend a First or Second Class Permit, and the Selectmen a Third Class Permit, if it appears that the arrangements contained in the permit will no longer prevent injury to persons or property due to a change in the circumstances under which the assemblage was to be held.

#### Section V – Application Procedure for Entertainment Permit

501. A person wishing to provide entertainment, as defined herein, shall file with the Town Manager an application containing: (a) the name, address and telephone number of the applicant and property owner; (b) the type of entertainment and dates and duration of same; (c) the location of the entertainment on the premises; (d) the applicant's proposed arrangements for parking, crowd control, traffic safety, and such other measures as will maintain the security and safety of the performers, patrons and general public.
502. The application for an entertainment permit shall be made annually on or before April 1 of each year.
503. The Selectmen shall approve or deny all applications for entertainment permits at their regular scheduled meetings next to the closing of the application date deadline.

#### Section VI – Appeal Procedure

601. A person may appeal to the Selectmen the denial of an application for a First or Second Class Permit by filing a written notice of appeal within 5 days of the denial of the permit. The Selectmen shall forthwith consider the appeal at a hearing at which the applicant may be present. The Selectmen may affirm or reverse the Town Manager's decision, or attach such additional conditions to permit as will in the judgment best protect the public safety and the safety of the persons involved in the assemblage.
602. The Selectmen may deny an entertainment permit if in their judgment such denial would best protect the public safety and the safety of the persons involved in the entertainment, the patrons or general public. Any appeal from the Selectmen's decision shall be to the Addison Superior Court according to law and court rules.

## Section VII – Obligations under Permit: Penalties

701. A person who organized, sponsors promotes, aids, forms or starts a public assemblage or entertainment for which a Second or Third Class permit is required, without having obtained a permit therefore, shall be fined not more than \$1,000 for each violation.
702. A person who willfully violates any of the terms or conditions attached to the permit for a public assemblage or entertainment permit shall be fined not more than \$1,000 for each violation.
703. Neither the Town Manager nor the Selectmen may issue any permit if the proposed public assemblage or entertainment would be in violation of any Town rule, regulations or ordinance.
704. The foregoing shall not be construed to limit the authority of a law enforcement officer in enforcing the criminal laws of the Town of Middlebury or the State of Vermont, or the orders of any Court, or to enjoin in a Court of competent jurisdiction any public assemblage or entertainment, about to be held in Violation of this Ordinance.

## Section VII – Severability

801. If any part of this ordinance shall be held to be void, invalid, or unconstitutional either under the laws or constitution of the State of Vermont or the United States by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and such portions shall be in full force and effect.

## Section XI – Effective Date

This ordinance shall take effect forty (40) days from adoption by the Selectmen under Section 107 of the Charter of the Town of Middlebury.

Adopted as draft by Board of Selectmen – 25 July, 1972  
Public Hearing held by Board of Selectmen – 8 August, 1972  
Final Adoption by Board of Selectmen – 22 August, 1972

Amended – March 9, 1993; Effective April 18 1993  
Amended – June 25, 1996; Effective August 4, 1996  
Amended – May 25, 1999; Effective July 4, 1999.