

Village of Aurora Local Law #5 of 2016

A Local Law Governing the Licensing of Vendors and Sidewalk Cafes in the Public Way

This local law is intended to institute governance and controls pertaining to uses which may be sought in the Village of Aurora's public ways, and as such the Aurora Village Board of Trustees ("Village Board") hereby, upon the motion of Trustee Van Orman, and the second of Trustee Bates, and approved by a 5-0 unanimous vote, does enact, find and adopt the following:

I. The preliminary purpose of the public streets, sidewalks and other public ways is for use by vehicular and pedestrian traffic. Vending on such public ways may promote the public interest by contributing to an active, safe, and attractive pedestrian environment. Reasonable regulation of vending on public ways is necessary to protect the public health, safety and welfare. The regulations contained in this local law are not intended to prohibit or hamper speech which is protected by the First Amendment but merely to regulate specific activities which are commercial in nature.

II. Definitions: As used in this Local Law, the following terms shall have the meanings indicated.

PUBLIC WAY: All areas legally open to public use, such as public streets, sidewalks, roadways, highways, parkways, alleys, easements, rights of way and parks, as well as the interior and areas surrounding public buildings.

PUSHCART: A cart, mobile stand, or barrow, manually or mechanically propelled, used to vend food intended for individual portion service.

SPECIAL EVENT: Any occasion, including but not limited to fairs, shows, exhibitions, Village-wide celebrations, festivals, etc., within a specifically defined area of the Village of Aurora for a period of time not to exceed 5 days.

STAND; Any newsstand, table, bench, booth, rack, handcart, pushcart or any other fixture or device which is not required to be licensed and registered by the Department of Motor Vehicles and is used for the display, storage or transportation of articles offered for sale by a vendor.

VENDOR: Any individual, including an employee, volunteer or agent of a group of individuals, partnership or corporation, who sells or offers to sell food, beverages, goods or merchandise on any public way from a pushcart, stand, motor vehicle, or from his or her person.

III. License Required for Vendors; Fees; Conditions

A. Required. It shall be unlawful for any vendor to sell, display or offer for sale any food, beverage, goods, services or merchandise on a public way within the Village of Aurora without first obtaining a license from the Village Clerk.

#### B. Issuance of License

1. The Village of Aurora from time to time will designate specific locations for which licenses will be granted for limited periods of time. The locations will be assigned to applicants on a first-come, first-served basis.

2. Insurance or bond. No license shall be issued to an applicant unless the applicant furnishes proof to the Village of a public liability bond or insurance policy as outlined in the Agreement for License (Attachment A) for property damage and injuries, including injury resulting in death, caused by operation of the vending business.

C. Fees. Each vendor granted a license under this local law shall pay a license fee of \$40 per month for the duration of the license. Vendors granted temporary vending licenses for special events shall pay a fee of \$5.00 per day of vending permitted.

#### D. Licenses

1. The License issued to a vendor shall be carried with the vendor at all times when he or she is engaged in the business of vending and clearly displayed for the public, If the vendor sells food or beverages, a valid health permit must also be displayed.

2. Licenses, permits, and identification badges shall be used only by the person to whom they were issued, and their employees, and may not be transferred to any other person.

### IV. Exemptions

The following vendors are exempt from the license requirements but shall otherwise be required to comply with the provisions of this local law.

A. All religious, non-profit and charitable organizations, including school groups.

B. The sale of fresh produce by the grower of such produce and vendors registered at an organized farmers' market.

C. The sale of only creative, handmade or artistic products which are original and are made or created by the artisan who is selling them.

D. Garage sales consisting of the sale of used, personal possessions, conducted on the owner's property. Sale of new or commercial goods, rentals, or sale of food or beverage

for personal gain shall be deemed commercial activity and prohibited on residential property unless there is a permit for home occupation.

E. Any person under the age of twelve (12).

## V. Application for License

The application for a vendor's license shall be secured from the Village offices and shall contain all information deemed relevant and necessary by the Village Clerk in order for the Village Board to determine whether a particular license may be issued, including but not limited to:

A. Full name, home address, permanent business address (if any), telephone number, driver's license number and proof of identity.

B. A brief description of the nature, character and quality of the food, beverages, goods or merchandise to be sold.

C. The specific location in which the vendor requests to conduct business, together with all equipment, Stands, structures, storage devices and materials to be situated upon said location in furtherance of the vending license.

D. If the vendor is employed by or is an agent of another, the name and business address of the principal/hiring person, firm, association, organization, company or corporation.

E. If a motor vehicle is to be used in the vending business, a description of the vehicle together with the motor vehicle registration number, the license number, and proof of insurance.

## VI. Health Permits

The application of any vendor engaged in the sale of food or beverages shall also be referred to the Cayuga County Health Department for approval of a health permit in addition to the regular vending license. Such vendor's equipment shall be subject to inspections by the Health Department at the time of application and at periodic intervals thereafter.

## VII. Restrictions Applicable to All Vendors

A. Stands: Vendor stands shall not:

1. Exceed six feet in length, four feet in width or ten feet in height.
2. Impede access to the entrance, driveway, easement, or right of way of any adjacent building or parking facility.

3. Store or place items relating to the operation of a vending stand on the sidewalk, excepting trash receptacles, unless such items are secured on, in or under the stand or pushcart.

B. All cooking equipment must be equipped with holding pans to keep grease from dripping onto the sidewalk or ground.

C. Hours of operation. Vendors shall be allowed to engage in business of vending only between 9:00 a.m. and 5:30 p.m. All vending stands must be removed from public property during non-vending hours. When temporary vending permits are sought for special events, etc. the applicant may request from the Village an exception to the usual hours of operation but must be removed from public property during non-operating hours.

D. Handicapped Areas. No vendor shall conduct business within 20 feet of any handicapped parking space or access ramp.

E. Removal of Trash. All trash or debris accumulating within 50 feet of any vending stand shall be collected by the vendor, deposited in trash containers, and removed. All vendors selling food or beverages must provide trash receptacles adjacent to or as a part of their stands and are responsible for removing all trash associated with their vending.

F. Prohibited Areas. A vending license issued pursuant to this chapter is valid only on the public ways of the Village of Aurora. The Village shall prohibit vendors from selling on specified public ways if it determines that such prohibitions are necessary for the protection of public health, welfare, and safety. Vendor stands and motor vehicles are prohibited within 50 feet of a fire hydrant, fire escape, or driveway of a fire station

G. Noise. No vendor may sound any device which produces a loud and raucous noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract public attention.

H. Signs. Signs shall not be electric or neon, nor of comparable substance and appearance, and shall otherwise be in conformity with the Village of Aurora zoning law.

### VIII. License Required for Sidewalk Cafe; Application, Fees, Expiration, Revocation

Sidewalk cafes shall be permitted upon application to the Village Board. A license to operate a sidewalk cafe shall only be issued to applicants who will operate the cafe in connection with the operation of a permitted restaurant on the first floor of the adjoining premises, which fronts or empties onto the street at the approximate location where the sidewalk cafe license is requested. The Village Board shall promulgate rules and

regulations for the operation of the sidewalk cafes. Note: The granting of a license hereunder does not authorize the sale of alcoholic beverages. The State Liquor Authority has exclusive jurisdiction of the production and sale of alcoholic beverages. The license fee payable to the Village of Aurora for sidewalk cafes shall be \$100. Such license shall be valid for one continuous six (6) month period from the actual issuance of the license.

Since the use of streets and sidewalks by the general public is the paramount purpose of public ways, any license issued hereunder may be revoked at any time with or without notice and with or without cause by the Village Board. No license fee or part thereof shall be refunded except pursuant to the rules and regulations of the Village Board.

## IX. Suspension or Revocation of License

A. Any license issued under this law may be suspended or revoked for any of the following reasons, or no reason at all:

1. Fraud or misrepresentation in the application for the license.
2. Fraud or misrepresentation in the course of conducting the business of vending.
3. Conducting the business of vending contrary to the conditions of the license.
4. Conducting the business of vending in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare.
5. Conviction of any crime involving moral turpitude while holding a license from the Village of Aurora.
6. Cancellation of Health Department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations.

## X. Penalties for Offenses

Any person who violates any provision of this law shall be punished by a fine not to exceed \$500.00 per occurrence or by imprisonment not to exceed 15 days, or by both such fine and imprisonment.

## XI. Severability

The invalidity of any clause, sentence, paragraph, or provision of this Local Law shall not invalidate any other clause, sentence or paragraph or part thereof.

## XII. Repealer

All local laws, ordinances, or parts of local laws or ordinances in conflict with this Local Law are hereby repealed and replaced hereby.

### XIII. Effective Date

This Local Law shall take effect upon filing in the office of the New York Secretary of State.

ATTACHMENT A

LICENSE FOR USE OF VILLAGE FACILITIES

THIS LICENSE granted on \_\_\_\_\_, between the Village of Aurora, a municipal corporation of the State of New York, having its principal place of business at 456 Main Street, Aurora NY 13026 (hereinafter called the "Village") and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter called the "Licensee").

WHEREAS, the Village operates and maintains \_\_\_\_\_ (village property); and

WHEREAS, Licensee desires the privilege of (description of business) at \_\_\_\_\_

NOW THEREFORE, in consideration of the premises and of the agreements of the respective parties herein set forth, it is mutually agreed as follows:

AGREEMENT

1. Grant. The Village grants to Licensee, subject to all the terms and conditions of this Agreement, a revocable license to use and occupy \_\_\_\_\_ owned by the Village and described in Section 3. Licensee accepts the license upon the terms and conditions herein set forth.
1. Term. The term of this Agreement shall be for Lduration and dates», unless earlier terminated pursuant to this Agreement.
2. Premises. Licensee is hereby permitted to use a portion of the Property as depicted on Exhibit A, attached hereto and made a part hereof (hereinafter, the "Premises") .
3. Use of Premises. Licensee's use of the Premises shall be limited to the Permitted Uses set forth in Exhibit B, attached hereto and made a part hereof. Licensee agrees and represents that it will operate, manage and maintain the Premises, and provide the services described in Exhibit B in a good and professional manner during the entire term of this license.
5. Security Deposit. (To be applied based on risk)
1. Fees. Licensee agrees to pay the Village an annual license fee as established annually by the Board of Trustees. The initial license fee shall be payable upon execution of this Agreement.

1. Additional Obligations of Licensee. In addition to the obligations set forth elsewhere in this Agreement, Licensee further agrees to the following:
  - a. Signage. Signage, if any, must be prior approved by the Village Mayor or designee.
  - b. Music. Licensee shall not allow or conduct any outdoor event or music amplification.
  - c. Conduct of Licensee's Employees.
    - a. Licensee, its agents, and employees shall not engage in any disruptive behavior, shall not be a nuisance, nor engage in actions of any kind which diminish the intent of the Village to provide a park suitable for pleasant family outings. What constitutes unacceptable behavior, nuisance or actions shall be in the sole discretion of the Village Mayor, or designee.
      - ii. Licensee, its agents, and employees shall wear appropriate attire for conducting business to the public. What constitutes appropriate attire shall be in sole discretion of the Village Mayor, or designee.
    - iii. Licensee, its agents, and employees shall maintain a work atmosphere free of sexual harassment.
  - d. Records & Accounting.
    - a. Licensee, its agents, and employees must have a copy of this license and photo identification in their possession during license period.
      - ii. Licensee agrees to keep accurate records of its sales and to retain those records for at least two (2) years. Licensee shall, on a quarterly basis, report sales to the Village on a form provided to Licensee by the Village, which shall include the dollar amount of sales and the number of transactions for each business day during the month.
    - a. Hours of Operation. Licensee shall not be on the Premises or engage in the Permitted Uses outside of the hours established by Local Law #5 of 2016 unless Licensee receives prior written permission from the Village.
    - b. Permits. Licensee warrants to the Village that Licensee will obtain any and



all necessary, federal, state and local permits, authorizations and approval required for the Permitted Uses described in Exhibit B. Licensee shall hold

harmless the Village against any costs, expenses, fines or actions in violation of the warranties described in this Section 7(g).

- a. Alterations. Licensee agrees not to make, or permit to be made, any alterations, improvements or additions to the Premises, or any part thereof, except by and with the prior written consent of the Village. All alterations, improvements and additions to the Premises shall be in accordance with all applicable laws, rules, and regulations. The Village reserves the right to require the Licensee to remove any and all alterations, improvements or additions at any time prior to or at the termination or expiration of the term of this license. Licensee shall be solely responsible for all costs, expenses, liens, claims, damages, or injuries to either persons or property arising out of, or resulting from the undertaking, making or removal of an alteration, improvement, or addition.
- b. Licensee's Risk. Licensee agrees that the entry upon and use of the Premises and/or any other activities of Licensee, its agents, and employees shall be at the sole risk and expense of Licensee. Licensee has inspected the Premises prior to execution of this Agreement and agrees to accept the Premises and access thereto in its present condition "as is." The Village shall not be liable for any damage to property or injury to persons due to the conditions of the Premises.

8. Relocation. Notwithstanding anything to the contrary contained in this Agreement, the Village reserves the right, at any time during the term of this Agreement, to relocate Licensee to another public space, of comparable size and suitability for the Permitted Uses. In the event the Village requests that Licensee relocate to another space, the Village shall not be responsible for any of Licensee's costs relating to or resulting from such relocation.

1. Maintenance of Premises & Licensee's Personal Property. The Licensee is solely responsible for maintenance and repairs to the Licensee's personal property placed or stored on the Premises and/or used in conjunction with Licensee's provision of services pursuant to this Agreement. The Village shall not under any circumstances have any responsibility for Licensee's personal property.

2. Vacating of Premises. At the expiration of the term, or in the event of revocation of the License by the Village, Licensee shall vacate the Premises, leave the Premises free from all debris, and deliver the Premises in its original condition, normal wear and tear excepted. Licensee shall promptly remove all personal property. Upon the Licensee's failure to do so, the Village may remove

Licensee's personal property from the Premises and have them delivered to Licensee at the Licensee's expense, placed in storage at Licensee's expense, or discarded of in any manner, at the Village's sole discretion. Licensee acknowledges and agrees that the Village shall have no liability to the Licensee

for incidental or consequential damages, loss of business, or otherwise, for exercising its rights under this Section 10.

1. **Revocation of License.** The Village reserves the right to revoke this license at any time for any reason. In the case of revocation for cause, all monies paid for or on account thereof may, at the option of the Village, be forfeited to and retained by the Village. In the case of revocation with no stated cause, all monies paid by Licensee shall be adjusted to the date of removal of all of Licensee's personal property. Licensee acknowledges and agrees that the Village shall have no liability to the Licensee for incidental or consequential damages, loss of business, or otherwise, for terminating this Agreement in accordance with the terms set forth in this Section 11.

2. **Non-Exclusive License.** Licensee understands that this license is not exclusive. The Village continues to maintain and control the public ways, and parks and the lands surrounding the Premises and reserves the right to grant additional licenses to other licensees.

1. **License Not a Lease.** This Agreement does not constitute a lease, but constitutes a mere revocable license and Licensee is limited to the use of the premises expressly and specifically described above. Licensee shall have no rights or privilege in any respect whatsoever to use any other part of the property of the Village for any purpose whatsoever. Licensee disclaims any interest that when coupled with the license herein granted would render it irrevocable.

2. **Relationship.** The parties intend by this Agreement to establish the relationship of a licensor and licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of licensor and licensee.

3. **Insurance.** Licensee shall provide insurance coverages as outlined on Exhibit C attached hereto naming the Village of Aurora as additional insured and shall provide proof of said insurance coverages in form satisfactory to the Village of Aurora.

## 16. General Provisions.

a. **Compliance with Laws.** Licensee shall comply with all laws, rules and

regulations of any governmental authority having jurisdiction over the Licensee, or the manner or method of production, procurement, delivery, or retrieval of products or services which this Agreement contemplates. In no event shall the failure of the Licensee to comply with this paragraph constitute a waiver of this paragraph by the Village.

- a. **Workers' Compensation Benefits.** This contract shall be void and of no force and effect unless the Licensee shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
- b. **Representations of the Parties.** The Village and Licensee each represent and warrant that this Agreement has been duly authorized, executed and delivered. Each party further represents that they are capable of carrying out the terms of this Agreement.
- c. **No Assignment.** This Agreement shall not be assignable by either party without the express written consent of the other party.
- d. **Entire Agreement/Modification.** This Agreement supersedes all prior written and oral agreements that may have been entered into between the Village and Licensee regarding the subject matter hereof. This agreement constitutes the complete understanding of the parties. No modification of any provisions herein shall be valid unless in writing and signed by both parties.
- e. **Waiver.** No Waiver of any breach of any condition in this Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.
- f. **Survival of Provisions.** Where the intent and sense of the provisions so require, contract provisions shall survive the termination of this Agreement by either party hereto.
- g. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
- 1. **Non-Discrimination.** In the hiring of employees for the performance of services under this contract, no Licensee or other person engaged in the

performance of any services contemplated by this contract shall, be reason of race or color, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates. No Licensee or any person on his behalf, shall, in any manner, discriminate against or intimidate any employee hired for the performance or services under this contract on account of race, creed, color or national origin.

a. Provisions Required by Law. Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein, and if through mistake or otherwise, such provision is not inserted, then upon the request of either party, this contract shall be amended forthwith to make such insertion.

b. Indemnification. Licensee will fully and promptly defend, indemnify, and hold the Village, its officers, agents, and employees harmless from and against any and all claims, liability, judgments, damages, costs, and expenses (including without limitation, reasonable legal fees, expenses, and court costs) which may arise from the acts, failures, omissions, or negligence of Licensee, its officers, agents, employees, and/or suppliers of any subcontractor or sub-subcontractor, their officers, agents, employees, and/or suppliers of contractor to the fullest extent permitted by law, excepting claims arising from the negligence of the Village, its officers, agents, and employees. Licensee agrees that the terms of this agreement shall serve to preserve the Village's right to contribution and/or indemnification from the Licensee, its employees, subcontractors, or suppliers under the New York State Worker's Compensation Law. Licensee shall require in any agreement with its subcontractors and/or sub-subcontractors that said subcontractors and sub-subcontractors will fully and promptly defend, indemnify, and hold the Village, its officers, agents, and employees harmless upon the same terms and conditions as outlined above. Licensee agrees to fully reimburse and indemnify the Village for all costs, disbursements, and expenses, including attorneys' fees incurred by the Village in any action or proceeding for the enforcement of any provision of this agreement.

1. Executory Clause. The Village shall have no liability under this Agreement to the Licensee or to anyone else beyond funds appropriated and available for this Agreement. This Agreement is not a general obligation of the Village, neither the full faith and credit nor the taxing power of the Village are pledged to the payment of any amounts due or to

become due under this Agreement.

a. Savings Clause. Should any part of this Agreement be held to be invalid or illegal by reason of any existing or subsequently enacted legislation or any decision of a court of competent jurisdiction, it is agreed that such finding shall not affect the remainder of the Agreement and the remaining paragraphs or parts shall remain in full force and effect.

b. Binding on Successors. The terms of this Agreement are binding upon the assigns, successors, heirs and representatives of the parties hereto. In the event a successor agreement is not in place at the end of the stated term of this Agreement, at the Village's option, the contract may be extended for

up to 120 days, under the existing terms and conditions, while a successor agreement is being negotiated between and approved by the parties.

a. Notices. Any and all notices to a p311y shall be addressed as indicated above or to such other address as may hereafter be designated in writing by either party. Notices to a party shall be effective only if in writing and delivered personally to the party or sent by certified mail, return receipt requested or sent by any nationally recognized delivery company. An additional copy of any notice to the Village shall be sent to the Village Attorney at:

Aurora Village Attorney  
456 Main St  
Aurora NY 13026-9790

LICENSEE HAS CAREFULLY READ AND CONSIDERED THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND HEREBY AGREES THAT LICENSEE SHALL BE BOUND BY ALL SAID TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Village of Aurora  
(  
)

By: \_\_\_\_\_

Village Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_

Licensee

Date: \_\_\_\_\_

Exhibit A

Description of the Premises

The Premises is comprised of the following locations, as shown on the map of the Park below:

a) [INSERT MAP]

Exhibit B

Permitted Uses

The Licensee may engage in the following Permitted Uses on the Premises:

1. \_\_\_\_\_ Licensee may exclusively occupy \_\_\_\_\_ owned by \_\_\_\_\_ the Village, as shown on the Premises, in which Licensee may \_\_\_\_\_ . The \_\_\_\_\_ will at all times remain the property of the Village.

2. Licensee may (insert permitted uses)

1. Licensee may undertake activities reasonably necessary for the maintenance of the Premises and Licensee's personal property stored thereon, and/or reasonably necessary to engage in other Permitted Uses.

## Exhibit C

### Insurance Requirements

1. Notwithstanding any terms, conditions or provisions, in any other writing between the parties, the Licensee hereby agrees to effectuate the naming of the Village as an unrestricted additional insured on the Licensee's insurance policies, with the exception of workers' compensation. If the Licensee is self-insured, evidence of its status as a self-insured entity shall be provided to the Village. If requested, the Licensee must describe its financial condition and the self-insured funding mechanism.

2. The policy naming the Village of Aurora as an additional insured shall:

- a. Be an insurance policy from an A.M. Best rated "secured" New York State licensed insurer.
- b. Contain a 30-day notice of cancellation.
- c. State that the organization's coverage shall be primary coverage for the Village of Aurora, its Board, employees and volunteers.
- d. The Village of Aurora shall be listed as an additional insured by using endorsement CG 2010 1085 or broader. The certificate must state that this endorsement is being used. If another endorsement is used, a copy shall be included with the certificate of insurance.

3. The Licensee agrees to indemnify the Village for any applicable deductibles.

4. Required Insurance:

- a. Commercial General Liability Insurance: \$1,000,000 per occurrence/ \$2,000,000 aggregate. General aggregate to apply on a per project basis.
- b. Automobile Liability: \$1,000,000 combined single limit for owned, hired and borrowed and non-owned motor vehicles.
  - c. Excess/Umbrella Insurance: \$1,000,000; \$3,000,000; \$5,000,000 each Occurrence and Aggregate depending on the type and size of the project.
- d. Workers' Compensation and N.Y.S. Disability: Statutory Workers' Compensation, Employers' Liability and N.Y.S. Disability Benefits Insurance for all employees.

1. Licensee acknowledges that failure to obtain such insurance on behalf of the Village constitutes a material breach of contract. The Licensee is to provide the Village with a certificate of insurance, evidencing the above requirements have been met, prior to the commencement of work or use of facilities. The failure of the Village to object to the contents of the certificate or the absence of same shall not be deemed a waiver of any and all rights held by the Village.

2. The Village is a member/owner of the NY Municipal Insurance Reciprocal

(NYMIR). Licensee further acknowledges that the procurement of such insurance

as required herein is intended to benefit not only the Village's district but also NYMIR, as the Village's insurer.

1. Licensee agrees to provide a Certificate of Insurance evincing such coverage as required by this agreement. Said Certificate of Insurance shall list the Certificate Holder as:

The Village of Aurora  
456 Main Street  
Aurora, NY 13026-9790

1. Licensee further agrees to provide a copy of their insurance policy endorsement providing coverage for either:
  - a. Blanket Coverage for additional insureds; or
  - b. Coverage specific for the Village; or
  - c. A statement on the Certificate of Insurance that the appropriate endorsement has been requested adding the Village as an additional insured. Upon such time as the endorsement is received by the Licensee, the Licensee shall forward a copy of said endorsement to the Village without delay.