



TO: Town Council
FROM: J.D. Wise, Economic Development & Sustainability Director
Molly Norton, Community Engagement Coordinator
DATE: March 21, 2024
RE: Creation of the Plaza Vending Committee and adopting Committee Bylaws

EXECUTIVE SUMMARY:

Town staff is proposing reestablishing the Plaza Vending Committee to ensure a formal and fair review of plaza vending applications and regulations. The Committee will meet seasonally to review vending applications and as needed for work on the plaza vending program. The Committee will consist of one (1) councilperson, one (1) at-large Mountain Village community member, one (1) member from a Mountain Village food and beverage business, one (1) member from a Mountain Village retail business and one (1) Town staff member.

ATTACHMENT:

- Drafted Plaza Vending Committee Bylaws

BACKGROUND:

The original Plaza Vending Committee was formed in 2019, consisting of members of Town staff, TMVOA and a councilperson. Prior to 2019, vendor selection was the sole discretion of the Business Development and Community Engagement Coordinator. The Plaza Vending Committee was dissolved in 2021 to reduce administrative burdens and the Business Development Advisory Committee (BDAC) has been reviewing and approving plaza vending applications since that time.

OVERVIEW:

History has proven vending selections can be controversial and highly competitive. The creation of the Plaza Vending Committee is recommended to establish appropriate representation for plaza vending decisions, to formalize the review of plaza vending applications, and to create an appropriate body to discuss the plaza vending regulations and recommend updates to Town Council.

It is proposed that the Plaza Vending Committee meet seasonally to review the summer and winter vending applications as well as on an as-needed basis to further discuss the plaza vending program. Recommended committee members shall consist of one (1) councilperson, one (1) at-large Mountain Village community member, one (1) member from a Mountain Village food and beverage business, one (1) member from a Mountain Village retail business and one (1) Town staff member.

If approved, staff will notice vacancies for the Plaza Vending Committee to be appointed at the April 25, 2024 Town Council Meeting.

STAFF RECOMMENDATION:

1. Approve the Plaza Vending Committee Bylaws as presented.

RECOMMENDED MOTION:

I move to approve the creation of the Plaza Vending Committee and its bylaws.

**BYLAWS OF THE TOWN OF MOUNTAIN VILLAGE
PLAZA VENDING COMMITTEE**

**ARTICLE I
Formation**

Section 1. Creation and Name. The name of this Committee, organized by the Town of Mountain Village ("Town"), shall be the Plaza Vending Committee ("Committee"), which Committee is authorized by Town Council to perform the tasks set forth herein. The Committee shall not have any binding authority on the Town or Town Council, and its scope of rights to provide non-binding recommendations shall be limited as specifically set forth herein.

**ARTICLE II
Intent and Purpose**

Section 1. Intent and Purpose. The intent and purpose of the Committee shall be to approve and assign the location, design, and use of plaza vending, and to evaluate that such activities contribute to the vibrancy of the Town's Village Center plazas. The Committee shall also develop and recommend Plaza Vending Regulations for Town Council consideration and approval.

**ARTICLE III
Membership**

Section 1. Appointments.

- A. The Committee shall consist of no less than five (5) members, each of whom shall be appointed by Town Council, and reflect the following membership:
 - 1. One Town Council member
 - 2. One member of the Mountain Village community at-large
 - 3. One member from a Mountain Village food and beverage business
 - 4. One member from a Mountain Village retail business
 - 5. The Economic Development and Sustainability Director, or their representative

Section 2. Purpose. The responsibilities of the Committee members are outlined in Article II. Town Council may add additional tasks at its discretion.

Section 3. Term. Terms of appointed members shall be staggered with the Town Council and at-large Committee members serving two (2) year terms, and the remaining business representatives serving an initial one (1) year term and subsequent two (2) year term for any reappointments or new appointments. Any member may be removed with or without cause by a majority vote of Town Council.

Section 4. Replacement. Upon a vacancy of a Committee member seat, the replacement Committee member(s) shall be appointed by Town Council pursuant to Article III, Section 1 above.

**ARTICLE IV
Chairperson**

Section 1. Chairperson. The Town Council representative shall act as Committee Chairperson.

Section 2. Duties of Chairperson.

- A. **Chairperson.** The Chairperson shall preside at all meetings of the Committee, and with the assistance of the Economic Development Director, or their designee, shall perform all duties usually incident to the office of Chairperson and such other duties as may be assigned to them from time-to-time by the Committee, in accordance with these Bylaws.

**ARTICLE V
Meeting**

Section 1. Regular Meeting. The schedule for Committee meetings shall be as follows:

- A. Plaza vending selections shall occur within the thirty (30) days following the seasonal (i.e., Summer and Winter) plaza vending application deadline as set by the Economic Development Department.
- B. Meeting dates shall be set and scheduled by the Committee, as set forth above. Attendance by Committee members at any meeting shall be in person or by video/telephone conference call where all parties can hear each other.

Section 2. Special Meetings. The Committee Chairperson shall be permitted to call Special Meetings as needed.

Section 3. Order of Business. At regular meetings of the Committee, the following outline presents the recommended order of business:

- 1. Applicant review and discussion
- 2. Public comment
- 3. Vote and plaza vendor selection
- 4. Adjourn

Section 4. Voting. When a motion for vote is made at any Committee meeting, all regular members of the Committee shall vote either by voice or roll call vote. A roll call vote shall be conducted upon the request of a regular member of the Committee or at the discretion of the presiding officer. Any action requiring a vote shall be decided by a simple majority of those Committee members in attendance at any duly convened meeting with a quorum.

Section 5. Quorum. A majority of the Committee members shall be necessary to constitute a quorum for the transaction of business.

Section 6. Rules of Order. Unless otherwise specified in these Bylaws, the Committee will follow procedures outlined in Robert's Rules of Order, Newly Revised.

Section 7. Agenda. The Committee Chairperson shall prepare the agenda and shall distribute no less than three (3) calendar days in advance of any scheduled meeting. Other items of the agenda shall include, but not be limited to, complete applications and supplemental documents, any intervening special meetings, and Committee reports.

**ARTICLE VI
RULES AND REGULATIONS**

Section 1. Rules and Regulations. The Committee shall recommend any amendments to the Plaza Vending Regulations for approval by Town Council. The Committee is subject to said regulations, as approved by Town Council.

**ARTICLE VII
MISCELLANEOUS**

Section 1. Authority. The authority of the Committee and its members shall be limited as to the express purposes and authority granted herein and shall not be expanded outside the scope of authority necessary to carry out these Bylaws and the Plaza Vending Regulations.

Section 2. Amendment. These Bylaws shall not be amended, except in writing and approved by a majority of Town Council at a duly noticed Town Council meeting.

Adopted and Approved by the Town of Mountain Village Town Council at a public hearing held on March 21, 2024.

Town of Mountain Village, Town Council

By: _____
Martinique Davis Prohaska, Mayor

Attest:

By: _____
Susan Johnston, Town Clerk

Approved as to Form:

David H. McConaughy, Town Attorney



455 Mountain Village Blvd. Mountain Village, CO 81435
(970) 369-8606

TO: Town Council
FROM: J.D. Wise, Economic Development & Sustainability Director
Molly Norton, Community Engagement Coordinator
DATE: March 21, 2024
RE: Adopting Revised Mountain Village Plaza Vending Regulations

EXECUTIVE SUMMARY:

The Plaza Vending Panel amended the Plaza Vending Regulations at its October 4, 2023 meeting. Town staff is proposing further revisions to the Plaza Vending Regulations specific to the appeals process, as outlined below. Additionally, staff recommends further review of the regulations with the newly formed Plaza Vending Committee.

ATTACHMENT:

- Proposed Plaza Vending Regulations

OVERVIEW:

At the October 4, 2023 Plaza Vending Panel meeting, staff brought forward recommended changes to the Plaza Vending Regulations for review and approval by the Plaza Vending Panel. These changes were prompted by discussions at previous Plaza Vending Panel and business development meetings, and also encompassed administrative changes to streamline staff’s management of the plaza vending program. The Plaza Vending Panel voted unanimously to approve the updated Plaza Vending Regulations with the addition of criteria around competition between vending carts and brick and mortar businesses.

Council will remember that an appeal to the Plaza Vending Panel’s conditional approval of Cheezy, LLC’s winter vending application was heard in November 2023 and proved to be an onerous process for council, staff, and the applicant. As such, staff is recommending revisions to the Plaza Vending Regulations appeals process to reduce the burden on all involved parties in the event of an appeal.

Although the plaza vending regulations were removed from the CDC in 2019, the reference to an appeals process under CDC section 17.4.5 remained in the regulations and prompted the appeals process that came before council. Staff is recommending removing reference to the CDC appeals process, and outlining the appeals process in the vending regulations as follows:

4. Appeals

- a. Any appeal of a decision or final action by the Plaza Vending Committee may be made by the applicant by filing a written request of appeal within fourteen (14) days of the date of the decision or final action appealed.
 - i. The Mayor, Mayor ProTem and Town Manager, or their respective designees, will review such request for appeal within fourteen (14) days of filing and make a determination on if the appeal may proceed to Town Council.
 - ii. If directed, the Town Council will hear such appeal within sixty (60) days of filing the appeal. Town Council shall hear the appeal in the form of a call-up where Town Council will reconsider the original application and make a determination on approval or denial. Town Council’s decision shall be considered final.



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It's worth noting that the proposed change removes the requirement of a quasi-judicial hearing, the required payment by the appellant of an up to \$2,000 appeal fee, and the need for the applicant to secure and pay for a court reporter.

NEXT STEPS:

Town staff, vendors and brick and mortar businesses all feel that further revisions are still needed to the Plaza Vending Regulations. Town staff proposes that Council adopt the Plaza Vending Regulations as presented so that staff can move forward with opening summer vending applications immediately. Staff then proposes working with the Plaza Vending Committee to gather further public input and recommend changes to the regulations that would be brought back to council for adoption at a future date.

STAFF RECOMMENDATION:

Staff recommends approval of the Plaza Vending Regulations as presented.

PROPOSED MOTION:

I move to approve the Town of Mountain Village Plaza Vending Regulations as presented.

TOWN OF MOUNTAIN VILLAGE VENDING REGULATIONS

1. Purpose and Intent

The purpose of these regulations is to establish criteria for the placement of vending apparatuses in the Town of Mountain Village. Vending opportunities provide the community a wider choice of eating, drinking, and vending options and provide suitable, low cost sites for the incubation of new business in Town.

The Town of Mountain Village Vending Regulations (“Vending Regulations”) are intended to regulate the location, design and use of vending apparatuses and temporary vending structures within public plazas and similar areas in order to ensure such activities contribute positively to the vibrancy of the Village Center and other public plaza areas.

2. Applicability

The Vending Regulations are applicable to any person or entity desiring to conduct food, beverage or retail vending on a plaza area within the Town of Mountain Village.

3. Review Process and Criteria for Decision

Applicants desiring to vend in the Mountain Village must submit complete plaza vending applications and shall delivered such completed applications to the Plaza Vending Committee which must be received by the seasonal deadline in order to be considered for approval. Applications received after the seasonal deadlines may be considered at the Committee’s discretion by written request from the applicant and explanation for late submission and must pay a late fee in addition to the application fee to be considered by the Plaza Vending Committee.

Only complete applications with all required supplemental documentation, filed by such deadlines will be accepted.

The criteria for decision to be applied by the Plaza Vending Committee are as follows:

- a.** Offered food, goods, wares, merchandise, services and hours of operation;
- b.** Diversity and compatibility of offering with existing businesses;
- c.** Food and services offered by applicant do not directly compete with existing Mountain Village plaza businesses;
- d.** The number of summer and/or winter seasons the applicant has vended on public property in the town;
- e.** Appearance, quality, safety and attractiveness of the vending operation and display apparatus;
- f.** Compliance and performance with Vending Regulations and Plaza Use Design Standards;
- g.** It shall be the burden of the applicant to demonstrate that submittal material and the proposed vending business substantially comply with the Vending Regulations and the Plaza Use Design Standards; and

- h. The Plaza Vending Committee will have sole and absolute discretion in granting a vending permit and will base its decision on the Town's needs for vending at that time.

4. Appeals

- a. An applicant may appeal a decision or final action by the Plaza Vending Committee by filing a written request of appeal with the Mountain Village Economic Development Department within fourteen (14) days of the date of the decision or final action appealed. The request for appeal must state with particularity the grounds for appeal, including any alleged violation of these Regulations.
 - i. The Mayor, Mayor ProTem and Town Manager, or their respective designees, will conduct a preliminary review of such request for appeal within fourteen (14) days of filing and determine whether grounds for an appeal exist. Upon completion of the preliminary review, the Mayor, Mayor ProTem and Town Manager, or their designees, shall dismiss the appeal in writing if they find that one or more of the following circumstances exist:
 1. The alleged violation, even if true, would not constitute a violation of these Regulations;
 2. The alleged violation was previously asserted in another appeal and is already being considered or was resolved;
 3. The alleged violation, even if true, is minor in nature and fails to justify the use of public resources to address;
 4. The appeal is time barred per section 4(a);
 5. The appeal is, on its face, frivolous, groundless, or brought for purposes of harassment; or
 6. The matter has or will become moot.
 - ii. In the event the appeal is not dismissed pursuant to section 4(a)(i), Town Council shall convene within a reasonable time and review the original application *de novo* and in accordance with these Regulations. Town Council's decision shall be final and binding upon the applicant.

5. General Standards

- a. **Location and Number.** The locations for approved vending applications shall be approved and assigned by the Plaza Vending Committee after considering all of the applications. The number of vending apparatuses and associated vending permits in plaza areas shall be as shown in Exhibit A
 - i. **Additional Vending Apparatuses.** The Plaza Vending Committee may permit additional vending apparatuses on plaza areas, in its sole discretion provided the Plaza Vending Committee determines that additional vending apparatuses are warranted and do not unreasonably impact the plaza areas.

- b. Vending Season, Operating Days and Hours.** Vendors must apply for and have a plaza use license agreement for each season in which they desire to operate.
- i. Summer Season:** Vending apparatuses shall operate a minimum of four (4) days per week, four (4) hours per day no later than the first Market on the Plaza through Labor Day unless otherwise approved by the Vending Committee. Vending operations are required during the Market on the Plaza, on designated Wednesdays from 11am-4pm.
 - ii. Winter Season:** Vending apparatuses shall operate a minimum of five (5) days per week, four (4) hours per day no later than December 15 until ski area closing unless otherwise approved by the Plaza Vending Committee.
 1. Monthly rent will begin December 1st for the winter season and June 1st for the summer season and will not be prorated to vendors actual start date should vendor start after these dates.
 2. Vending during Mountain Village special events will count toward minimum operation requirements.
- c. Required Hours of Operation.** Hours of operation are as follows:
- i.** Vending hours shall be consistent throughout each season and shall meet the minimum requirements as set forth in section b above.
 - ii.** Applicants shall submit a plan for the hours and days of operations to be approved by the Plaza Vending Committee as part of the approval process. Any change in the scheduled days and/or hours of operation for approved vending operations, other than minor, temporary changes due to weather and sick days, shall be approved by the Plaza Vending Committee prior to any such change in the schedule.
 - iii. Special Events and After-Hours Vending.** The Town recognizes vendors may desire to operate outside of their normal operating hours during Town approved special events or town happenings (i.e. Club Red, music concerts, festivals weekend evenings). Such requests must be made in writing to the Town's Economic Development department at least 48 hours prior to the rested after hours vending and will be approved on a case-by-case basis.
- d. Vending Apparatus Required.** Vending is only allowed from an approved vending apparatus or temporary structure. Vending apparatuses must meet all applicable size, space, and design standards per the Plaza Use Design Standards, Lighting Regulations, and Sign Regulations as set forth in the Town of Mountain Village Community Development Code.
- e. Maximum Footprint.** All apparatus and related equipment must be contained in a 40 square foot area. All equipment must be necessary to the vending apparatus and vendor's business and must be kept orderly clean manner and may not constitute a potential safety hazards. Vending Apparatuses shall enclose or screen from view of the right of way and abutting property all accessory items not used

by customers, including, but not limited to, tanks, barrels, or other accessory items. All said accessory items must be confined to the designated pad.

- f. Vending Permit Required.** No person shall stage, operate or have present a vending apparatus within the town without a valid vending permit issued in accordance with these Vending Regulations.

- g. Limits on the Hours of Operation.** The Town may set hours of operation, limitations on and similar measures for vending activities to ensure no adverse impacts to residents and guests.

- h. Amplified Music Prohibition.** Amplified music for vending is prohibited.

- i. Special Event Vending.** A vending permit is not required for vending that is approved as a special event pursuant to the provisions regulating Special Events.

- j. License Agreement Required.** The vending permittee shall enter into a license agreement with the Town for the vending operation in such form, manner and content as determined by the Town.
 - i.** A license agreement having a term of more than one (1) year shall be reviewed annually by the Vending Committee for compliance. In the event of non-compliance, the license agreement and vending permit may be terminated.
 - ii.** License agreements may be issued for a term of up to three (3) years at the discretion of the Vending Committee.
 - iii.** Notwithstanding any other provisions therein, a plaza vending license agreement shall provide for indemnification of the Town from any liability for damages resulting from the operation of the vending business and for general liability insurance in such amounts as determined by the Town and naming the Town as an additional insured.

- k. Required Documentation.** Once the Vending application has been approved by the Town, but prior to the issuance of a vending permit, the applicant shall submit the following prior to the commencement of operations.
 - i.** Proof of insurance satisfactory to the Town;
 - ii.** Town business license;
 - iii.** Colorado sales tax license;
 - iv.** For prepared food, San Miguel Environmental Department permit;
 - v.** Cash security deposit with the Town in an amount determined by the Town for the purpose of guaranteeing the repair of any damage to plaza areas caused by the vending operation; and
 - vi.** Executed license agreement as required by this regulation.

6. **Non-transferable.** The vending permit shall not be transferable or assignable.
7. **Non-interference.** No person engaged in vending shall make any unnecessary sounds or noise, nor obstruct any pathway or other public property, nor disturb or impede other persons or otherwise create any public nuisance. The use of radios, stereos or any other audio systems in connection with any vending is prohibited.
8. **Vehicles.** Private vehicles for vending are prohibited in the plaza areas for any purpose unless the Town has issued a plaza area access permit pursuant to the Town of Mountain Village Municipal Code.
9. **Area Maintenance.** Vending permittee shall maintain both the permitted area, the immediate area surrounding the permitted area, the plaza area surface (washing down pavers, clean pavers, etc.) and the vending apparatus in a neat, clean and hazard free condition and to the town's satisfaction.
10. **Cleaning.** Vending permittee shall clean the areas of the designated vending apparatus which are covered by the vending permit by removing debris, trash, sweeping and washing down the location as needed to the satisfaction of the Town. The cleaning shall be conducted as frequently as each day, if necessary, to prevent debris or trash from being blown or scattered around the plaza area.
11. **Repair of Damage.** Vending permittees shall, to the satisfaction of the Town, repair and/or replace any damage to any portion of the permitted vending apparatus area only to the extent any damages shall be caused by or in connection with permittee's use thereof, including without limitation the placement of personal property on the plaza area.
 - a. All costs for such repair or replacement shall be the responsibility of the permittee.
 - b. The Town, in its sole discretion, shall determine when the vending area needs repair or replacement due to the activities of permittee and/or its customers in the vending area.
 - c. The Town may suspend a vending permit for failure to pay for damage or the payment of a required damage deposit.
12. **Snow Removal.** The vending permittee shall move the vending apparatus per request of the Town for snow removal and/or plaza maintenance when necessary.
13. **Recycling and Trash.** Trash removal fees for public trash generated by the vending permittee are included in the monthly permit fee as established in the fee resolution for Vending Carts All back-of-house trash must be removed daily by the permittee.

- 14. Public Seating Areas.** The vending permittee must make every reasonable effort to ensure their customers utilize the public seating area and do not take food items into the seating areas of neighboring restaurants.
- 15. Monthly Vending Fees.** The vending permittee shall remit the monthly vending fee as set forth in the fee resolution, with such fee to be due and payable on the first of each month. Vending fees shall be prorated for partial months in each season (partial months based on start dates outlined in 4.b.i and ii and will not be prorated based on when a vendor chooses to start the season).
- 16. Plaza Location.** The Town has the right to relocate the site of the apparatuses of plaza vending permit holders within all the designated plaza areas. The vending permit administrator shall notify the vending permittee three (3) days prior to any vending apparatus relocation.
- a. If a vendor wishes to move locations during high traffic events, a request must be submitted to the Plaza Vending Committee Chair designated staff member seven (7) days prior to the desired date of location change.
- 17. No Encroachment.** Vending permittee shall have the obligation to prevent encroachment of the vending apparatus or any related vending equipment or permittee property onto areas of the plaza outside the designated vending apparatus location except for any approved storage location shown in the required license agreement.
- 18. Abandon/Surrender.** A permittee without written authorization from the Town acknowledging extenuating circumstances, who fails to conduct vending operations during the required hours of operation for a period of two (2) consecutive weeks during the designated season, will be considered to have surrendered and abandoned his or her vending permit. The Town shall have the right to reassign that space to another applicant. The Town has the right to refuse to authorize an absence. The Town shall send written notice of the surrender and abandonment of the permit to the permittee.
- 19. Utility Fees.** The Town may require a plaza vending operator to pay utility fees if the vending apparatus operation uses electric utilities. The use of generators is prohibited.
- 20. Revocation and Suspension.**
- a. Any vending permit issued hereunder may be revoked or suspended by the Plaza Vending Committee for a violation or breach of a term or condition of the vending permit or license agreement, including, but not limited to:
 - i. Operation of a vending apparatus in a location other than that approved or outside the permitted area;

- ii.** Failure to pay monthly plaza vending fee;
- iii.** Failure to clean areas of the designated vending apparatus location to town satisfaction;
- iv.** Failure to remain in operation during the minimum number of business hours or days;
- v.** Failure to maintain the design of a vending apparatus or vending apparatus signs in the condition as represented in the development application;
- vi.** Failure to pay for the repair and/or replacement of any damage to any portion of the permitted vending apparatus area caused by or in connection with permittee's use thereof;
- vii.** Changing the use of the vending apparatus that does not comply with the approved application;
- viii.** Failure to remove vending apparatus from designated location as required by the vending permit;
- ix.** Permittee violates any provision of this Plaza Vending Rules and Regulations or other law or regulation of the Town.;
- x.** The permittee obtained the vending permit by fraud or misrepresentation; and/or
- xi.** The permittee is convicted of an offense that would create a danger to the public health, safety and welfare following issuance of the vending permit.
 - 1.** No permittee whose vending permit has been revoked may receive a refund of any part of the permit fee paid.
 - 2.** Upon revocation or expiration of any vending permit, the permittee shall remove all structures or improvements from the permit area and storage area and restore the area to its condition existing prior to issuance of the permit within forty-eight (48) hours of revocation or expiration of permit.
 - 3.** If the vending permit is revoked, the permittee may not apply for the same type of permit for one (1) year after the effective date of the revocation.

APPROVED AND ADOPTED BY THE MOUNTAIN VILLAGE PLAZA VENDING PANEL AT THE OCTOBER 4, 2023 PLAZA VENDING MEETING.

APPROVED AND ADOPTED BY THE MOUNTAIN VILLAGE TOWN COUNCIL AT THE _____, 2024 TOWN COUNCIL MEETING.