

**CITY COUNCIL MEETING**

**AGENDA ITEM VII**



CITY OF FRANKLIN  
COUNCIL AGENDA REPORT  
*City Council meeting July 2015*

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**From:** Elizabeth Dragon – City Manager

**Subject:** Temporary/Trial Lease agreement for 425 Central St. City Vacant lot

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**Recommended Motion:** “I move to approve the proposed license with BB’s Scoops ice cream to utilize city property located at 425 central street”

2. Mayor asks a second, discussion, and calls the vote.

**Discussion:** The city property at 425 central street has remained vacant for many years. Over the past year, at the drug task force planning meetings we have discussed the idea of partnering with a vendor to use FYI (Franklin Youth Initiative) students to sell ice cream. Brian, owner of BB’s scoops has agreed to interview FYI students for his summer staff. This would be a wonderful incentive to encourage other high school students to join FYI. Selling ice-cream in the downtown area also supports bringing additional foot traffic to the area (something encouraged during our most recent Franklin for a lifetime project). Lastly, leasing the space would provide for additional revenue to the city.

BB’s scoops was built as a soft serve ice cream shop on wheels. A couple years ago they began offering hard scoop ice-cream-including bowls, cones, waffle cones, and sundaes.

BB’s scoops has a state hawker’s license and are fully insured with a two million dollar liability policy.

The proposal is for a 60 day trial license/lease to allow them to operate 11:30am to 8pm up to seven nights a week. They are interested in some landscaping improvements to the lot and a few picnic tables. They run on a generator (described as whisper quiet). The 60day trial license would allow BB’s scoops to determine if they have enough traffic to make this a more permanent agreement. It would also allow the city staff to monitor how the arrangement impacts parking etc.

Attachments/Exhibits: **1. License (prepared by the city attorney)**  
**2. Pictures**

CITY OF FRANKLIN, NEW HAMPSHIRE  
316 Central Street  
Franklin, NH 03235



and

BRIAN BAXTER, D/B/A BB'S SCOOPS ICE CREAM  
1 Shute Hill Road  
Sanbornton, NH 03269

**NON-EXCLUSIVE LICENSE TO ENTER AND UTILIZE REAL ESTATE**

NOW COMES the CITY OF FRANKLIN, NEW HAMPSHIRE, a New Hampshire municipal corporation with a place of business at 316 Central Street, Franklin, New Hampshire, 03235, hereinafter referred to as "Franklin" and BRIAN BAXTER, D/B/A BB'S SCOOPS ICE CREAM, a private individual with a place of business located at 1 Shute Hill Road, Sanbornton, New Hampshire, 03269, hereinafter referred to as "Baxter", and hereby mutually agree as follows:

1. **License.** Franklin hereby grants to Baxter a non-exclusive, revocable license to enter upon real estate owned by Franklin and located at 425 Central Street, Franklin, New Hampshire, and to temporarily utilize that location to operate a mobile ice cream shop/truck.
2. **Nature of Relationship.** The legal relationship between Franklin and Baxter will be one of licensor/licensee. This license shall be temporary in nature in keeping with the terms herein and shall be revokable at any time by Franklin upon twenty-four (24) hours notice to Baxter.
3. **Purpose.** Baxter shall use the license location solely for the purpose of ice cream retail sales. No other products shall be sold by Baxter at the referenced location without the specific written approval of Franklin. Operation of the retail sales may occur daily for the duration of this license within the hours of 11:00 a.m. until 9:00 p.m.

4. **Term.** This license shall be effective starting July \_\_, 2015 and shall terminate, unless extended in writing, on September \_\_, 2015.
5. **License Fee.** Baxter shall pay to Franklin a license fee in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) weekly in advance. Baxter shall make payment by cash or check payable to the “City of Franklin, New Hampshire” and deliver it in a timely fashion to the City’s finance office.
6. **Terms and Conditions.** This license is granted on the following terms and conditions:
  - A. **Plan.** The truck and any associated seating, tables, counters, umbrellas or other amenities shall be located as shown on the attached plan. No alterations of the attached plan shall occur without the approval of the Franklin Planning Department.
  - B. **Site Modifications.** Baxter shall make no permanent site modifications without the written consent of Franklin. Baxter may make temporary landscaping improvements such as the installation of lawns, ornamental plantings and the like which shall be removed at the conclusion of the license period unless otherwise agreed to by the City.
  - C. **Fuel and Utilities.** Franklin shall supply no utilities. Baxter shall utilize only self-contained utilities such as self generated electricity, refrigeration and the like. No flammable fuels shall be used on site with the exception of motor vehicle fuel stored in the truck’s fuel tank unless such fuel use and storage has been inspected and approved by the Franklin Fire Department.
  - D. **Maintenance.** Baxter will keep the premises clean of all litter and debris and will maintain the property in an appropriate and attractive manner, including mowing as may be applicable.

- E. The retail operation permitted pursuant to this agreement shall create no excessive or bothersome noise, odor, vibration or other objectionable event.
7. **Legal Compliance.** Baxter shall at all times comply with all local, state and any other applicable ordinances, laws or regulations including the land use regulations of the City of Franklin. This license does not constitute a waiver of any legal requirement including the necessity of obtaining an appropriate vendor permit.
8. **Insurance and Indemnification.** During the term of this license Baxter shall maintain personal liability insurance in a form acceptable to Franklin with minimum liability limits of Two Million Dollars (\$2,000,000). Baxter shall also maintain standard motor vehicle insurance on the ice cream truck with liability limits of no less than Five Hundred Thousand/Three Hundred Thousand Dollars (\$500,000/\$300,000). Baxter shall indemnify and hold Franklin harmless from any and all nature of claims, actions, suits or damages arising from or related to its activities pursuant to this license or its location upon Franklin's property.
9. **Notification.** Baxter will supply Franklin, and its Police Department, with updated contact information including a primary contact, mailing address, telephone number, e-mail address and cell phone number (if applicable).
10. **Amendment.** No term or provision of this agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.
11. **Entire Agreement.** It is agreed that all understandings and representations heretofore between the parties are merged into this agreement, which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this agreement.

12. **Agreement Binding.** This agreement shall be binding upon and be to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties.
13. **Assignment.** No party shall assign any obligation under this agreement without the written consent of the other party.
14. **Governing Law.** This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.
15. **Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes but all of which shall constitute one in the same agreement.
16. This agreement is granted pursuant to action of the Franklin City Council having been taken on July 6, 2015.

**IN WITNESS WHEREOF**, we have hereunto set our hands and executed this agreement on the day and year first above written.

**City of Franklin, New Hampshire**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**Elizabeth Dragon, City Manager  
Duly Authorized**

**Brian Baxter, d/b/a BB'S Scoops Ice Cream**

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Witness

\_\_\_\_\_  
**Brian Baxter**



SCOOPS

SCOOPS ICE CREAM

SCOOPS ICE CREAM

DOT 186523

The Freudenberg NOK Family Thanks You  
For all you do, this comes from you!

SCOOPS

BB's  
**SCOOPS**  
ICE CREAM



In His Name



CAMP  
FIRE **SMORES**  
**WILD MAINE  
Blueberry\***  
**TOASTED COCONUT**  
**VANILLA\***  
Black Raspberry <sup>with</sup> <sup>chocolate</sup>  
YOGURT <sup>swirls</sup>  
**Black Raspberry**