

Chapter 120

REGULATION OF DIRECT SELLERS AND SOLICITORS

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120-1 Registration Required.

It shall be unlawful for any direct seller or solicitor or employee of such, to engage in sales within the Town of Pleasant Springs without being registered for that purpose as provided herein.

120-2. Definitions

In this ordinance:

(a) "Charitable Organization" shall include any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation, or one purporting to be such, and religious organizations or organizations such as Boy Scouts, Girl Scouts, 4-H Clubs, or school based organizations.

(b) "Clerk" shall mean the Town Clerk.

(c) "Direct Seller" shall include any individual who, for such individual, or for a partnership, association, limited liability corporation, limited liability partnership, sells goods, or takes sales orders for the later delivery of goods, at any location other than the permanent business place or residence of said individual, partnership, association, or corporation, and shall include, but not be limited to, peddlers, hawkers, and transient merchants.

(d) "Goods" are personal property of any kind and shall include goods provided incidental to services offered or sold.

(e) "Merchandise" shall include personal property of any kind, and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of goods by a donor or prospective customer.

(f) "Permanent merchant" means any person who, for at least one year prior to the consideration of the application of this ordinance to said merchant a) has continuously operated and established place of business in the local trade area among the communities bordering the place of sale or b) has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his/her residence.

(g) "Regulated Sales" are sales of any goods by a direct seller, or solicitor which are not otherwise exempt under this Chapter.

(h) "Solicitor" is any person who for compensation or other consideration, plans, conducts, manages, or carries on any drive or campaign in the Town for the purpose of soliciting contributions for or on behalf

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of any charitable organization or any other person who engages in the business of or holds said person out to persons in the state as independently engaged in the business of soliciting contributions for such purpose. A bonafide officer or employee of a charitable organization is not deemed a solicitor unless his or her salary or other compensation is computed based on the funds to be raised or actually raised.

(i) "Transient Merchant" means any individual who engages in the retail sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. For purposes of this section, sale of merchandise includes a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greatest part of value for the price received, but does not include a farm auction sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce or other perishable products at retail or wholesale by a resident of this state.

120-3 Exemptions

The following shall be exempt from all provisions of this ordinance:

- (a) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- (b) Any person selling merchandise at wholesale to dealers in such merchandise;
- (c) Any person selling agricultural products which the person has grown;
- (d) Any person, including artists or craftsmen, selling their own creations who are residence of Dane County, Wisconsin;
- (e) Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business;
- (f) Any person who has an established place of business where the merchandise being sold is offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested, a home visit by said person;
- (g) Any person who had had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;
- (h) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;
- (i) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- (j) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under sec. 440.41, Stats. Any charitable organization engaging in the sale of merchandise and not registered under sec. 440.41, Stats., or which is exempt from that statute's registration requirements, shall be required to register under this ordinance;
- (k) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk that such person is a transient merchant; provided that there is submitted to the Clerk proof that such person has leased for at least one year, or purchased, the premises for which he/she has conducted business in the market area for at least one year prior to the date the complaint was made;

(l) Any individual licensed by an examining board as defined ins. 15.01(7), Wisconsin Statutes.

(m) This ordinance does not apply to transient merchants while doing business at special events authorized by the Town Board.

120-4. Registration of Direct Sellers

(a) Applicants for registration must complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:

- (1) Name, permanent address and telephone number, and temporary local address, if any;
- (2) Age, height, weight, color of hair and eyes;
- (3) Name, address and telephone number of the person, firm, association or corporation that the transient merchant represents or is employed by, or whose merchandise is being sold;
- (4) Temporary address and telephone number from which business will be conducted, **if** any;
- (5) Nature of business to be conducted and a brief description of the merchandise, and any services offered;
- (6) Proposed methods of delivery of merchandise, if applicable;
- (7) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
- (8) Most recent cities, villages, towns, not to exceed three, where applicant conducted his/her business;
- (9) Place where applicant can be contacted for at least seven days after leaving this town;
- (10) Statement as to whether applicant has been convicted of any crime, statutory violation or ordinance violation related to applicant's transient merchant business within the last five years, and the nature of the offense and the place of conviction. Applicants are under a continuing obligation to provide notice of such convictions subsequent to the initial application.

(b) Applicants shall present to the Clerk for examination:

- (1) A driver's license or some other proof of identity as may be reasonably required;
- (2) A state certification of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
- (3) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law; such certificate to state that applicant is apparently free from any contagious or infectious disease and shall be, dated not more than 90 days prior to the date the application license is made.
- (4) A photograph approximately two inches by two inches showing the head and shoulders of such person, which was taken no more than one year prior to the application.
- (5) A copy of the applicant's fingerprints taken by any authorized law enforcement agency.

(c) Application Fee. At the time the registration is returned, a fee of \$10.00 shall be paid to the Clerk to cover the cost of processing said registration.

Upon payment of said fee, the Clerk shall register the applicant as a transient merchant and date the entry. Said registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in Section S(b) below.

120-5. Registration of Solicitors

(a) Applicants for registration as a solicitor shall complete and return to the Clerk a signed registration form furnished by the Clerk which shall contain the following information:

(1) Name, address and telephone number of the charitable person, firm, association, organization or corporation that the solicitor represents or is employed by, together with credentials establishing the relationship;

(2) Purpose of the charitable organization;

(3) Names, permanent addresses, and telephone numbers of the persons who will actually be engaged in soliciting together with the time periods and the routes which the persons will solicit;

(4) A statement of whether the charitable organization is registered with the Wisconsin Department of Regulation and Licensing under Wis. Stat. §440.41 et. seq. and a complete copy of the charitable organization registration form and supporting materials if required to be registered by the State;

(b) For the filing of the application, the Applicant shall present the following to the Clerk for examination:

(1) A driver's license or some other proof of identity as may be reasonably required;

(2) A photograph approximately two inches by two inches showing the head and shoulders of such person, which was taken no more than one year prior to the application.

(3) If not required to be registered with the State, a copy of the charitable organizations latest filed federal tax form.

(c) No fee shall be charged for the regulation of solicitors. The Clerk shall examine the application and supporting documents. If the application and supporting documents are complete, the Clerk shall register the applicant as a solicitor. The registration shall be valid for one year from the date of issuance.

120-6. Investigation

(a) Upon receipt of each application, the Clerk or a representative of the Town of Pleasant Springs may make a complete an investigation of the statements made in such registration.

(b) The Clerk shall refuse to register the applicant if it is determined, pursuant to the investigation above, that: the application contains material omission or materially inaccurate statement of fact; complaints of a material nature have been received against the applicant by authorities in the most recent cities, villages and town, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of Section 4(b) above.

(c) The Clerk shall revoke the registration of any applicant who after registration is determined to have violated any condition of this ordinance or who has been convicted of any crime, statutory violation, or ordinance violation related to the registrant's business in any jurisdiction after registration is approved.

120-7. Appeal.

Any person refused or denied registration, or whose registration has been revoked may appeal the denial or revocation by appealing in writing to the Town Board within fourteen (14) days. The procedure for such appeal shall follow the appeal procedure of Wis. Stat. Chapter 68.

120-8. General Regulation of Direct Sellers and Solicitors

(a) Prohibited Practices.

(1) Regulated Sales shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place; or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

(2) A Direct Seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity, or characteristics of any merchandise offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A solicitor for a charitable organization transient merchant shall specifically disclose what portion of the sale price of the merchandise being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the merchandise.

(3) Regulated sales shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

(4) Direct Sellers shall not make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one-hundred foot radius of the source.

(S) Registrants shall not allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

(b) Disclosure Requirements.

(1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of merchandise or services he/she offers to sell.

(2) If any sale of merchandise is made by a direct seller, or any offer for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel said transaction if it involves the extension of credit or is a cash transaction of more than \$25.00, in accordance with the procedure as set forth in sec. 423.203, Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of secs. 423.203(1)(a)(b) and (c), (2) and (3), Stats.

(3) If the transient merchant takes a sales order for the later delivery of merchandise, he/she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance whether full, partial, or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date, and whether a guarantee or warranty is provided and, if so, the terms thereof.

120-9. Revocation of Registration

(a) Registration may be revoked by the Town Board after notice and hearing, if the registrant made any material omission or materially inaccurate statements in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in transient sales, violated any provision of this ordinance or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in selling.

(b) Written notice of the hearing shall be served personally or by certified mail, on the registrant at least 72 hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

120-10. Penalty

Any person adjudged in violation of any provision of this ordinance shall forfeit not less than ten dollars nor more than one thousand dollars for each violation per day plus costs of prosecution. Each violation shall constitute a separate offense.

120-11. Severability and Conflict.

Should any section, clause or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

120-12. Effective

This Ordinance shall take effect the day after its passage and publication.

The above and foregoing ordinance was duly adopted by the Town Board of the Town of Pleasant Springs at a regular meeting held on the 19th day of June, 2012.