

CHAPTER 4

Direct Sellers

SEC. 7-4-1 REGULATIONS AFFECTING THE ACTIVITIES OF DIRECT SELLERS, SOLICITORS, AND HAWKERS OF MERCHANDISE

- (a) Purpose. The Common Council finds it necessary to regulate the practice of direct sellers going in and upon private dwellings in the City of Menasha not having been requested or invited to do so by the owner or occupant of said private residences for the purpose of conducting any trade, profession, pursuit or occupation for gain. This ordinance is intended to provide a safe, profitable, and peaceful method for direct seller businesses to conduct any pursuit for gain within the city limits. It is also necessary for the city to protect the consumer against the sale of inferior products or services provided by the businesses to be regulated herein.
- (b) Registration Required. Any person who is a direct seller and engages in the business of going from door to door, in and upon private dwellings within the city, selling or taking orders for or offering to sell or take orders for goods or services shall first be registered with the city for that purpose as provided herein.
- (c) **DEFINITIONS.** In this section:
- (1) **Charitable organization** shall include any person, association or corporation, described in Section 501(c)(3) of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the Internal Revenue Code, that is or purports to be established for a charitable purpose, including for a benevolent, philanthropic, patriotic, religious, or eleemosynary objective.
 - (2) **Clerk** shall mean the City Clerk.
 - (3) **Direct seller** refers to any individual who, for him/herself, or for a partnership, business, association or corporation, sells or offers to sell goods or services, or takes orders or offers to take orders for the later delivery of goods or services, by going from door to door, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods or services includes donations required by the direct seller for the retention of goods or services by a donor or prospective customer.
 - (4) **Goods** shall include personal property of any kind, and shall include goods provided incidental to services offered or sold.
- (d) **EXEMPTIONS.** Except as otherwise indicated, the following shall be exempt from registering:
- (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
 - (2) Any permanent merchant or employee thereof who takes orders away from the established place of business for the sale of goods regularly offered for sale by such merchant within the counties of Winnebago, Calumet or Outagamie County and who delivers such goods in their regular course of business;
 - (3) Any person who has an established place of business where the goods or services being sold are offered for sale on a regular basis, and in which the buyer or prospective buyer has initiated contact with, and specifically requested a dwelling visit by, said person;

- (4) Any charitable organization or bona fide employee, officer or agent of the same which has for at least six months maintained a permanent office or headquarters in Winnebago, Calumet or Outagamie counties.

(e) **REGISTRATION.**

- (1) Applicants for registration must complete and return to the Clerk a registration form furnished by the Clerk containing the following information:
 - A. Legal name, permanent address and telephone number; and temporary address, if any;
 - B. Date of birth, height, weight, and color of hair and eyes, and driver license number;
 - C. Name, address and telephone number of the person, association, business, corporation or group that the direct seller represents or is employed by, or whose merchandise is being sold;
 - D. Nature of business to be conducted and a brief description of the goods offered and any services offered;
 - E. Proposed method of delivery of goods or services, if they are to be delivered at a later time after a solicitation;
 - F. Make, model and license number of any vehicle to be used by applicant conducting such business;
 - G. Last cities, villages, towns, not to exceed three, where applicant conducted similar business;
 - H. Place where applicant can be contacted for at least seven days after leaving the City of Menasha, or for at least seven days after the last delivery date of any goods or services sold or purchased in the City of Menasha, whichever day is later;
 - I. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's business within the last five years; the nature of the offense and the place of conviction.
- (2) Applicants shall present to the Clerk for examination:
 - A. A fully completed registration form; and
 - B. A driver license or some other proof of identity as may be reasonably required.
- (3) At the time the registration form is returned, a fee of \$20.00 shall be paid to the Clerk to cover the cost of processing said registration. The applicant shall also be required to sign a statement identifying his/her agent with a physical Wisconsin address to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant. Except as otherwise provided herein, upon filing a completed application, payment of said fee and the signing of said completed statement, the Clerk shall register the applicant as a direct seller and date the entry. Said registration shall be valid for a period of three months from the date of entry, subject to subsequent refusal as provided in subsection (5)(b) of this section.

(f) **Investigation.**

- (1) Upon receipt of each application, the Clerk may refer it immediately to the Chief of Police or designee, who may make and verify the statements made in such registration.

(2) The Clerk shall refuse to register or reregister the applicant if it is determined, pursuant to any investigation in subsection (5)(a) of this section, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant/registrant by authorities in the last cities, villages and towns, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory 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 subsection (4) of this section.

(g) **Appeal.** An applicant or registrant may request a hearing before the Administration Committee appealing the denial or revocation of registration under this Section.

(h) **Regulation of Direct Sellers.**

(1) Prohibited Practices. The following prohibited practices shall apply to all direct sellers, including those otherwise exempt under subsection (3) of this section.

A. A direct seller shall be prohibited from: calling at any dwelling or other place between the hours of 7:00 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.

B. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or characteristics of any goods offered for sale, the purpose of his/her visit, his/her identity or the identity of the organization he/she represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods or services 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 goods or services.

(2) Disclosure Requirements.

A. Where the direct seller initiates contact with the prospective buyer, after the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose in oral or written form his/her name, the formal name, and the popular name if not identical to the formal name, of the company or organization he/she is affiliated with, if any, and the identity of the goods or services he/she offers to sell or purchase.

B. If any sale of goods or services is made by a direct seller, or any sales order for the later delivery of goods or services 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 any amount, in accordance with the procedure as set forth in Wis. Stat. Ch. [423](#), except that cash transactions of any amount shall be covered hereunder. 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 Wis. Stat. § [423.203](#)(1)(a), (b) and (c), (2) and (3).

C. All direct sellers shall wear upon their person a clearly, legible identification card or tag.

(3) If the direct seller takes a sales order for the later delivery of goods or services, 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.

(i) **Revocation of Registration.**

(1) Registration may be revoked if the applicant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or presentation in the course of engaging in direct sales, violated any provision of this section or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

(2) Written notice of the revocation shall be served personally on the applicant and the revocation will become immediately effective.

(j) **Penalty.** Any person convicted of violating any provisions of this section shall forfeit not less than \$20.00 nor more than \$500.00 for each violation plus costs of prosecution. Each violation shall constitute a separate offense.

(k) **Severance Clause.** The provisions of this section are declared to be severable, and if any subsection, sentence, clause or phrase of this section shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining subsections, sentences, clauses and phrases of this section; they shall remain in effect, it being the legislative intent that this section shall stand notwithstanding the invalidity of any part.