

## **Section 7.05 Solicitations and Transient Merchants**

### **7.05(A) Title/Purpose**

The title of this Section is Solicitations and Transient Merchants. The purpose of this Section is to regulate solicitations within the Town and protect the general welfare and safety of the Town's residents.

### **7.05(B) Authority**

This Section is adopted pursuant to the Town's authority to exercise Village powers as provided in Wis. Stat. § 60.22(3) and the Town's authority to promote public safety.

### **7.05(C) Solicitations Prohibited**

It shall be unlawful for any transient merchant to engage in direct sales within the Town of Leeds without being registered for that purpose as provided herein.

### **7.05(D) Definitions**

(1) Transient merchant means any person 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. The term shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the transient merchant for the retention of goods by a donor or prospective customer. For purposes of this Section, sale of merchandise includes a sale in which the personal services rendered 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.

(2) Permanent merchant means any person who, for at least one (1) year prior to the consideration of the application of this Section to said merchant:

(a) Has continuously operated an established place of business in the Town; or

(b) Has continuously resided in the Town and now does business from his residence.

(3) 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 merchandise by a donor or prospective customer.

(4) Charitable organization shall include any benevolent, philanthropic, religious, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such, including, for example, Boy Scouts, Girl Scouts, 4-H Clubs and school organizations.

(5) Clerk shall mean the Town of Leeds Clerk or designee.

#### **7.05(E) Exemptions**

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

(1) Regular Delivery Routes. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;

(2) Wholesalers. Any person selling merchandise at wholesale to dealers in such merchandise;

(3) Agricultural Products. Any person selling Wisconsin agricultural products which the person has grown;

(4) Deliveries by Permanent Merchants. 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;

(5) Requested Home Visits. Any person who has an established place of business where the merchandise being sold or 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;

(6) Prior Sales Transactions. Any person who has 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;

(7) Services Not Offering Merchandise. Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;

(8) Auctions; Sales Authorized by Statute. 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;

(9) Charitable Organizations; Limited Exemptions. 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 Town Clerk proof that such charitable organization is registered under Wis. Stat. § 440.41. Any charitable organization engaging in the sale of merchandise and not registered under Wis. Stat. § 440.41, or which is exempt from that statute's registration requirements, shall be required to register under this Section.

(10) Alleged Transient Merchants. Any person who claims to be a permanent merchant, but against whom complaint has been made to the Town Clerk that such person is a transient merchant, provided that there is submitted to the Town Clerk proof that such person has leased for at least one (1) year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business in this Town for at least one (1) year prior to the date complaint was made.

(11) Persons Licensed by Examining Boards. Any individual licensed by an examining board as defined in Wis. Stat. § 15.01(7).

(12) Town Authorized Events. This Section does not apply to transient merchants while doing business at special events authorized by the Town Board.

#### **7.05(F) Registration**

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

(a) Name, permanent address and telephone number, and temporary address, if any;

(b) Height, weight, color of hair and eyes, and date of birth;

(c) 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;

(d) Temporary address and telephone number from which business will be conducted, if any;

(e) Nature of business to be conducted and a brief description of the merchandise offered and any services offered;

(f) Proposed method of delivery of merchandise, if applicable;

(g) Make, model and license number of any vehicle to be used by applicant in the conduct of his business;

(h) Last cities, villages, towns, not to exceed three (3), where applicant conducted similar business just prior to making this registration.

(i) Place where applicant can be contacted for at least seven (7) days after leaving this Town;

(j) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five (5) years, the nature of the offence and the place of conviction.

(2) Identification and Certification. Applicants shall present to the Town Clerk for examination:

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

(b) A state certificate 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;

(c) 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, dated not more than ninety (90) days prior to the date the application for license is made.

(3) Registration Fee

(a) At the time of filing applications, a total fee as provided for in the Town's Fee Schedule for each thirty (30) day period shall be paid to the Town Clerk to cover the cost of investigation of the facts stated in the applications and for processing said registration. Every member of a group must file a separate registration form.

(b) The applicant may be required to sign a statement appointing the Town Clerk his/her agent 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, in the event the applicant cannot, after reasonable effort, be served personally.

(c) Upon payment of said fees and the signing of said statement, the Town Clerk shall register the applicant as a transient merchant and date the entry. Said registration shall be valid for a period of one (1) year from the date of entry, subject to subsequent refusal as provided in Sec. 7.05(G)(2) below.

#### **7.05(G) Investigation**

(1) Upon receipt of each application, the Town Clerk or Clerk's designee shall make and complete an investigation of the statements made in such registration, said investigation to be completed within five (5) days from the time of referral.

(2) The Town Clerk or Clerk's designee may refuse to register the applicant and issue a permit if it is determined, pursuant to the investigation above, that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three (3), in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the applicant's fitness to engage in direct selling; the applicant failed to comply with any applicable provision of Section 7.05(F) above; or other pertinent reasons.

#### **7.05(H) Appeal**

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the Town Board or, if none has been adopted, under the provisions of Sections 68.07 through 68.16, Wis. Stat.

## **7.05(I) Regulation of Transient Merchants**

### **(1) Prohibited Practices:**

(a) A transient merchant shall be prohibited from: calling at any dwelling or other place between the hours of 9:00 p.m. and 8:00 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 transient merchant shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character 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 charitable organization transient merchant shall specifically disclose what portion of the sale price of 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.

(c) No transient merchant 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.

(d) No transient merchant shall 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 (100) foot radius of the source.

(e) No transient merchant shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

### **(2) Disclosure Requirements:**

(a) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant shall expressly disclose his 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.

(b) If any sale of merchandise is made by a transient merchant or any sales order 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 Wis. Stat. § 423.203, the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stat.

(c) 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.

#### **7.05(J) Revocation of Registration**

(1) Registration may be revoked by the Town Clerk or Town Board if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation 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. The revocation determination may be reviewed at a subsequent hearing.

(2) Written notice of the hearing shall be served personally or pursuant to Section 7.05(F)(3) on the registrant at least seventy-two (72) hours prior to the time set for the hearing; such notice contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

#### **7.05(K) Special Event Vending Permit**

(1) Permit Required. There shall be a daily charge for a special event vending permit as provided in the Town's Fee Schedule. The Town Board will determine whether the applicant qualifies for a special event vending permit. The permit shall set forth the exact dates on which and the exact location where such business shall be carried on and shall be valid only during the dates and at the locations specified. In addition, the vendor shall have adequate liability insurance in force as required by this Section.

(2) Exclusive Vending Rights During Special Events:

(a) During a special event the Town Board may by resolution and after public hearing suspend specifically enumerated restrictions on transient merchants on any street, alley, sidewalk or public square and public park. Alternative rules and procedures may be established by the Town Board for the special event.

(b) To encourage the integrity, comprehensiveness and success of a special event taking place on any street, alley, sidewalk, public square or public park, the Town Board may by resolution and after public hearing reserve up to ten (10) days during any vending year when transient merchant permits will not be valid at a particular location and when some or all categories of transient merchant permits will not be valid in the perimeter of the special event. During any special event, the rules, guidelines and procedures as set forth in the resolution approved by the Town Board shall take precedence.

(c) For each such specific day during which certain or all vending permits have been declared to be not valid, the Town Board may by separate resolution and after public hearing, authorize the sponsor of a special event to select vendors, salespersons and vending sites for the duration of the special event within its perimeter. The event's sponsor shall contact the Town Board at least one (1) week before the public hearing with an outline of the rules, regulations, fees, areas affected and a proposed resolution for exclusive vending rights. The determinations of the Town Board as to any specific day during which a transient merchant permit will not be valid shall be by resolution adopted at least four (4) weeks in advance of such specific day. Transient merchant permits shall be subject to invalidation for up to ten (10) days each vending year of any one (1) location as provided in this subdivision.

(d) No person holding a transient merchant permit may sell or offer for sale any goods or foods during a special event when his/her license is not valid unless authorized by the sponsor of the special event as specified above.

**7.05(L) Penalty**

Any person violating any provision of this Section shall be subject to a penalty as provided in Section 3.02 of this Code. Each day of violation shall constitute a separate offense. Any permittee violating any of the terms of this Section shall be subject to permit revocation or suspension by the Town Board.