

## ARTICLE III. TRANSIENT MERCHANTS

### Sec. 18-51. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

*Charitable organization* means any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.

*Clerk* means the city clerk/treasurer and authorized deputies.

*Merchandise* includes personal property of any kind, and includes 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.

*Permanent merchant* means any person who, for at least one year prior to the consideration of the application of this article to such merchant, has:

- (1) Continuously operated an established place of business in the local trade area among the communities bordering the place of sale; or
- (2) Continuously resided in the local trade area among the communities bordering the place of sale and now does business from his residence.

*Person* means all humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for the same purpose or objective.

*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 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 sale conducted by or for a resident farmer.

**Cross references:** Definitions generally, § 1-2.

### Sec. 18-52. Exemptions.

- (a) The following shall be exempt from all provisions of this article:
  - (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
  - (2) Any person selling merchandise at wholesale to dealers in such merchandise.
  - (3) Any person selling agricultural products which the person has grown.

- (4) 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) 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, such person.
  - (6) 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) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise.
  - (8) 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) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of the organization, provided that there is submitted to the city clerk/treasurer proof that such charitable organization is registered under Wis. Stats. § 440.41. Any charitable organization engaging in the sale of merchandise and not registered under Wis. Stats. § 440.41, or which is exempt from that statute's registration requirements, shall be required to register under this article.
  - (10) Any person who claims to be a permanent **merchant**, but against whom complaint has been made to the city clerk/treasurer that such person is a **transient merchant**, and who has provided proof to the city clerk/treasurer that he has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in this city for at least one year prior to the date complaint was made.
  - (11) Any individual licensed by an examining board as defined in Wis. Stats. § 15.01(7).
- (b) This article does not apply to **transient merchants** while doing business at special events authorized by the common council.

### **Sec. 18-53. Records.**

The police department shall report to the city clerk/treasurer all convictions for violations of this article and the city clerk/treasurer shall note any such violation on the record of the registrant convicted.

### **Sec. 18-54. Registration required.**

It shall be unlawful for any **transient merchant** to engage in direct sales within the city without being registered for that purpose as provided in this article.

## **Sec. 18-55. Registration.**

- (a) *Registration information.* Applicants for registration under this article must complete and return to the city clerk/treasurer a registration form furnished by the clerk/treasurer which shall require the following information:
- (1) Name, permanent address and telephone number, and temporary address, if any.
  - (2) Height, weight, color of hair and eyes, and the date of birth.
  - (3) Name, address and telephone number of the person 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 offered and any services offered.
  - (6) Proposed method 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 business.
  - (8) Last cities, villages, towns, not to exceed three, where applicant conducted similar business just prior to making this registration.
  - (9) Place where applicant can be contacted for at least seven days after leaving this city.
  - (10) 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 years, the nature of the offense and the place of conviction.
- (b) *Identification and certification.* Applicants shall present to the city clerk/treasurer for examination:
- (1) A driver's license or some other proof of identity as may be reasonably required.
  - (2) A state certificate of examination and approval from the sealer of weight 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, dated not more than 90 days prior to the date the application for license is made.
- (c) *Registration fee.*
- (1) At the time of filing application, a fee of \$25.00 shall be paid to the city clerk/treasurer to cover the cost of investigation of the facts stated in the application and for processing the registration. Every member of a group must

file a separate registration form.

- (2) Representatives of charitable/religious organizations engaged in door-to-door solicitations shall comply with the provisions of this article, including investigation and registration, but shall not be required to pay the registration fee.
- (3) Upon payment of the fee and completion of the investigation, the city clerk/treasurer shall register the applicant as a **transient merchant** and date the entry. The registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in section 18-56(b).

(Ord. No. OR01-02, § 1, 3-13-2001)

### **Sec. 18-56. Investigation.**

- (a) Upon receipt of each application, the city clerk/treasurer may refer it immediately to the police department for an investigation of the statements made in such registration. The city shall have up to but not exceeding 30 days to investigate, process and review the application before registration hereunder.
- (b) The city clerk/treasurer shall refuse to register the applicant if it is determined, pursuant to the investigation 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, 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 18-55(b).

(Ord. No. OR01-02, § 1, 3-13-2001)

### **Sec. 18-57. Appeal.**

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the common council or, if none has been adopted, under the provisions of Wis. Stats. §§ 68.07 through 68.16.

### **Sec. 18-58. Revocation of registration.**

- (a) Registration may be revoked by the common council after notice and hearing if the registration 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 article 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.
- (b) Written notice of the hearing shall be served personally or pursuant to section 18-55(c) 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.

## Sec. 18-59. Regulations.

### (a) *Prohibited practices.*

- (1) 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.
- (2) 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 visit, his identity or the identity of the organization he 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. Such portion shall be expressed as a percentage of the sale price of the merchandise.
- (3) 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.
- (4) 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 100-foot radius of the source.
- (5) No **transient merchant** shall allow rubbish or litter to accumulate in or around the area in which he 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 name, the name of the company or organization he is affiliated with, if any, and the identity of merchandise or services he offers to sell.
- (2) 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 the transaction if it involves the extension of credit or is a cash transaction of more than \$25.00, in accordance with the procedures as set forth in Wis. Stats. § 423.203; 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. Stats. § 423.203(1)(a), (b) and (c), (2) and (3).
- (3) If the **transient merchant** takes a sales order for the later delivery of merchandise, he 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.

- (4) **Transient merchants** shall have on their persons a document or identification tag issued by the city clerk/treasurer. Failure to have such document or identification tag will result in forfeiture of the permit and forfeiture of up to \$50.00.