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Chapter 6-4

Direct Sellers

[HISTORY: Adopted by the City Council of the City of Two Rivers (Title 6, Ch. 4, of the 1981 Code). Amendments noted where applicable.]

§ 6-4-1 Registration required.

It shall be unlawful for any direct seller to engage in direct sales within the City of Two Rivers without being registered for that purpose as provided herein.

§ 6-4-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

CHARITABLE ORGANIZATION

Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.

DIRECT SELLER

Any individual who, for him/herself, or for a partnership, association or corporation, 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, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.

GOODS

Includes personal property of any kind, and shall include goods provided incidental to services offered or sold.

PERMANENT MERCHANT

A direct seller who, for at least one year prior to the consideration of the application of this chapter to said merchant:

- A. Has continuously operated an established place of business in this City; or
- B. Has continuously resided in the City and now does business from his/her residence.

§ 6-4-3 Exemptions.

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

- A. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- B. Any person selling goods at wholesale to dealers in such goods;
- C. Any person selling agricultural products which such person has grown;
- D. Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such

goods in their regular course of business;

- E. Any person who has an established place of business where the goods being sold are 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;
- F. 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;
- G. Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods;
- H. 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;
- I. 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 § 202.12, Wis. Stats. Any charitable organization not registered under § 202.12, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this chapter;
- J. 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 from which he/she 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;
- K. Any church, charitable or fraternal organization whose principal location is in the City;
- L. Any vendor selling products at a special event being held on City-owned property or on a City street, when such vendor has been authorized to sell from that location by the City Manager or a City department head, or when such vendor has been authorized to sell from that location by an organization that has been given permission to use that City property or street for such special event by action of the City Council.

§ 6-4-4 Applicants for registration; fees.

- A. Applicants for registration must complete and return to the Police Department a registration form furnished by the Chief of Police, which shall require the following information: **[Amended at time of adoption of Code (see Title 1, General Provisions, Ch. 1-1, Art. III)]**
 - (1) Name, permanent address and telephone number, and temporary 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 direct seller 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 goods offered and any services offered;

- (6) Proposed method of delivery of goods, if applicable;
- (7) Make, model and license number, or vehicle identification number, or serial number of any vehicle and trailer to used by applicant in the conduct be of his/her business;
- (8) Last cities, villages, towns, not to exceed three, where applicant conducted similar business;
- (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 any 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. Applicants shall present to the Chief of Police 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 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, dated not more than 90 days prior to the date the application for registration is made.

C. Registration fee. **[Amended at time of adoption of Code (see Title 1, General Provisions, Ch. 1-1, Art. III)]**

- (1) At the time the registration is returned, a fee as provided for in Chapter 1-2 of this Code shall be paid to the Police Department to cover the cost of processing said registration.
- (2) The applicant shall sign a statement appointing the Chief of Police 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.
- (3) Upon payment of said fee and the signing of said statement, the Chief of Police shall register the applicant as a direct seller 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 § 6-4-5B below.

§ 6-4-5 Investigation.

- A. Upon receipt of each application, the Chief of Police shall make and complete an investigation of the statements made in such registration.
- B. The Chief of Police shall refuse to register the applicant 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 in which the applicant conducted similar business; or the applicant failed to comply with any applicable provision of § 6-4-4B above.

§ 6-4-6 Appeal.

[Amended at time of adoption of Code (see Title 1, General Provisions, Ch. 1-1, Art. III)]

Any person who receives a determination or order from the Chief of Police under this chapter and objects to all or any part thereof may appeal to the City Manager within seven days of receipt of the order, and the City Manager shall hear such appeal within 30 days of receipt of written notice of the appeal. After such hearing, the City Manager may reverse, affirm or modify the order or determination appealed from and the grounds for his decision shall be stated in writing. The City Manager shall, by letter, notify the party appealing the order or determination of his decision within 10 days after the hearing has been concluded and file his written decision with the City Clerk.

§ 6-4-7 Regulation of direct sellers.

A. Prohibited practices.

- (1) A direct seller 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 character 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 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.
- (3) No direct seller 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 direct seller 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 fifty-foot radius of the source.
- (5) No direct seller shall 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 direct seller shall expressly disclose his/her name, the name of the company or organization he/she is affiliated with, if any, and the identity of goods or services he/she offers to sell.
- (2) If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel said transaction in accordance with the procedure as set forth in § 423.203, Wis. 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 § 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats. **[Amended at time of adoption of Code (see Title 1, General Provisions, Ch. 1-1, Art. III)]**

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

§ 6-4-8 Revocation of registration.

- A. Registration may be revoked by the Chief of Police 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, or violated any provision of this chapter.
- B. Upon revocation, the appeals process of § 6-4-6 may be utilized by the registrant.

§ 6-4-9 Vendors from special vehicles.

- A. Vendors. Any person who shall vend any product from a vehicle **or a trailer** especially equipped for that purpose ("vendors") shall be considered a direct seller for purposes of this chapter, and the terms and provisions of §§ 6-4-1 through 6-4-8 **and 7-1-7 through 7-1-11** shall apply to such persons unless they are inconsistent with this section.
- B. Qualifications. In addition to other requirements of this Chapter 6-4, vendor shall have a current driver's license issued pursuant to the Wisconsin Statutes and shall be familiar with those sections of the rules of the road relating to parking restrictions, and shall abide by the provisions thereof. Vendors shall be familiar and comply with all other applicable provisions of this Code.
- C. Requirements for vehicles and insurance. Any vehicle used or operated by a vendor hereunder shall be insured for liability for property damage and personal injury by a reputable, licensed insurer satisfactory to the City. A certificate of insurance verifying insurance coverage shall be filed with the City with each application for registration by a vendor. Such insurance shall provide for policy limits **in the following minimum amounts, naming the City as additional insured:**
- 1. General liability: \$2,000,000.**
 - 2. Automobile liability (owned, non-owned, leased).**
 - (a) Bodily injury: \$2,000,000 each occurrence.**
 - (b) Property damage: \$2,000,000 each occurrence.**
 - 3. Worker's compensation: statutory limits.**
 - 4. Employer's liability:**
 - (a) \$500,000 each accident.**
 - (b) \$500,000 each injury.W**
 - (c) \$1,000,000 policy limit.**
 - 5. Umbrella liability.**

(a) \$2,000,000 over the primary insurance coverages listed above.

Vendors' vehicles shall comply with Ch. 347, Wis. Stats., as it may be amended or renumbered, relating to equipment of vehicles. Bells or chimes approved by the Police Department may be used as devices to attract customers, but no other type of noisemaking device shall be permitted for that purpose. The vendor shall comply with such other conditions as may be imposed by the City. The registration issued pursuant to this section shall be effective for a period of one year from its issuance, provided it is not earlier revoked.

- D. Hours of operation. No vehicle used by a vendor shall be operated for the purpose of sales prior to 10:00 a.m. and later than 1/2 hour after sunset, provided that the City Council may make an exception to the requirement for special events.
- E. Limitations. Except as expressly provided herein, no product shall be dispensed by vendors on Washington Street between the north curblane of 22nd Street to the south curblane of 12th Street, on 22nd Street between the west curblane of Forest Avenue to the west end of 22nd Street at Neshoto Road, or any part of Zlatnik Drive. This prohibition shall not apply in the case of any special event taking place on Washington Street, 22nd Street, or Zlatnik Drive or authorized by the City Council. No product shall be dispensed by vendors at any park as defined in § 7-1-7 without being previously authorized by the Parks and Recreation Director or at any special event with exception to the terms and provisions of §§ 6-4-3 of this Code. With authorization of the Parks and Recreation Director, a vendor may sell from parking lots number one and five adjacent to Zlatnik Drive or designated lot at Walsh Field, but may only be parked in the same manner and at the same places designated for the parking of motor vehicles.
- F. Revocation. A registration issued to a vendor may be revoked by the Chief of Police if the vendor made any material inaccurate statement in the application for registration or violated any provision of this section, or any other applicable provision of this Chapter 6-4 of the City's Municipal Code. Upon revocation, the vendor may appeal to the City Council. Such appeal shall be made in writing and shall be submitted to the City Clerk within 30 days after revocation.
- G. Exceptions. This § 6-4-9 of the Municipal Code shall not apply to any vendor selling products from a parked vehicle at a special event held on City-owned property or a City street, if such vendor has been authorized to sell products from that location by the City Manager or a City department head, or if such vendor has been authorized to sell from that location by an organization that has been given permission to use City property or street for such special event by action of the City Council.