

Chapter 12 - BUSINESSES^[1]

Footnotes:

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State Law reference— Regulations and licensing of businesses generally, Wis. Stats. § 440.01 et seq.; cigarette and tobacco products retailer license, Wis. Stats. § 134.65; restrictions on sale or gift of cigarettes or tobacco products, Wis. Stats. § 134.66; food regulation generally, Wis. Stats. § 97.01 et seq.; local licensing of nonintoxicating and soda water beverages, Wis. Stats. § 66.0433; solicitation of funds for charitable purposes, Wis. Stats. § 440.41 et seq.

ARTICLE I. - IN GENERAL

Secs. 12-1—12-18. - Reserved.

ARTICLE II. - DIRECT MARKETING AND SALES^[2]

Footnotes:

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State Law reference— Solicitation of funds for charitable purposes, Wis. Stats. § 440.41 et seq.; local regulation of charitable organizations, Wis. Stats. § 440.42; consumer transaction administration, Wis. Stats. § 426.101 et seq.; consumer approval transactions and other consumer rights, Wis. Stats. § 423.101 et seq.

Sec. 12-19. - Purpose.

The purpose of this article is to protect the residents of the Village in direct marketing consumer transactions and solicitations.

(Ord. No. 2007-02, § 1(7-1-1(a)), 6-7-2007)

Sec. 12-20. - Definitions.

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

- (1) *Charitable organization.* Any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation registered under Wis. Stats. § 440.42.
- (2) *Clerk.* The Village of Windsor Clerk or his or her designated appointee.
- (3) *Direct Seller.* Any individual who, for himself or 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, 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.

- (4) *Food.* Raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- (5) *Goods.* Personal property of any kind, and shall include goods provided incidental to services offered or sold.
- (6) *Merchandise.* 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.
- (7) *Mobile Food Establishment.* A Direct Seller who serves or sells food intended for human consumption from a movable vehicle, push cart, trailer, boat, or temporary structure which periodically or continuously changes location.
- (8) *Permanent Merchant.* A direct seller who, for at least one year prior to the application of this ordinance is the merchant, a) has continuously operated an established place of business in the Village or b) has continuously resided in the Village and now does business from his or her residence.
- (9) *Service Base.* An operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
- (10) *Solicitor.* Any person who plans, conducts, manages or carries on any drive or campaign in the Village for the purpose of soliciting contributions, travels from house to house for or on behalf of any charitable organization or any other person or organization, or who engages in the business of, or holds himself or herself out to persons in the State as independently engaged in the business of soliciting contributions for such purpose.
- (11) *Transient Merchant.* A Direct Seller who engages in the sale of merchandise at any place in the Village of Windsor temporarily, and who does not intend to become and does not become a permanent merchant of the Village. 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. Transient Merchant shall also include any one engaged in the sale of food, ice cream, candy, beef or other merchandise out of a Mobile Food Establishment.

Sec. 12-21. - Exemptions.

The following shall be exempt from the provisions of this article except for sections 12-35 and 12-36:

- (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;
- (2) Any person selling goods at wholesale to dealers in such goods;
- (3) Any person selling agricultural products which such person has grown or produced;
- (4) 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 the County and who delivers such goods in their regular course of business;
- (5) 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;
- (6) Any person who has had, or one who represents a company which had, a prior business transaction, such as a prior sale or a credit arrangement, with the prospective customer;

- (7) Any person who is a participant in and is raising money for local school extracurricular programs, youth or sports organizations;
- (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 said organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under Sec. 440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under Sec. 440.41, Wis. Stats., or which is exempt from the statute's requirements, shall be required to comply with this chapter;
- (10) Any person who claims to be a permanent merchant, but against whom a complaint has been made to the Windsor Police Department or Clerk that such person is a Transient Merchant; provided that there is submitted to the Windsor Police Department or Clerk proof that such person has leased for at least one year, or purchased, the premises from which he/she has conducted business in the Village for at least one year prior to the date the complaint was made;
- (11) Any individual licensed by an examining board as defined in Section 15.0(7), Wis. Stats.;
- (12) This chapter does not apply to Transient Merchants while doing business at special events authorized by the Village Board;
- (13) Any group or individual selling merchandise for the primary purpose of raising funds for a public or private school engaged in the education of children from kindergarten through high school or any extracurricular group affiliated with such a school;
- (14) Any family member holding an estate sale of the personal property of a deceased member of their family;
- (15) Any individual holding an occasional sale of personal property items from their residence.;
- (16) Any individual engaged in proselytizing, canvassing or pamphleteering regarding political or religious views and not selling any merchandise or soliciting any funds or services.

Sec. 12-22. - Registration required.

It shall be unlawful for any direct seller or solicitor to engage in direct sales or solicitation for contributions of money or other items of value within the Village without registration as provided herein.

Sec. 12-23. - Application.

- (a) *Application information.* Each and every member of a group must file a separate application form (furnished by the Village Clerk) and return it to the Village Clerk. An application shall require the following information:
 - (1) Name, permanent address and telephone number, and temporary address, if any, of person conducting sales or solicitation activities; which shall be kept current with the Village Clerk during consideration of the application and at all times while a registration is held;
 - (2) Copy of current Driver's License or other form of identification that includes a photograph of the applicant;
 - (3) Name, address and telephone number of the applicant, firm, association, organization or corporation that the direct seller or solicitor represents or is employed by, acts as agent for or whose merchandise is being sold;

- (4) Temporary address and telephone number from which business will be conducted, if any;
- (5) Documentation showing that the applicant has permission to be at that temporary address;
- (6) Nature of business to be conducted and a brief description of the goods offered, and any services offered or purpose of organization for which solicitation is performed;
- (7) Proposed method of delivery of goods, if applicable;
- (8) Make, model and registration number of any vehicle to be used by the applicant in the conduct of his or her business or solicitation;
- (9) The last three communities where applicant conducted similar business;
- (10) Place where applicant can be contacted for at least seven days after leaving the Village;
- (11) Statement as to whether applicant(s) has been convicted of any crime or ordinance violation within the last five years; the nature of the offense and the place of conviction.
- (12) Mobile Food Establishments shall provide the following additional information:
 - a. A description of all food to be offered for sale;
 - b. The location(s) where business will be conducted;
 - c. The date(s) and time(s) business will be conducted;
 - d. The address of the Service Base from which the operation will be supported.

(b) *Supporting documentation.* An applicant must present to the Village Clerk for examination:

- (1) A state issued driver's license or other proof of identity that includes a photograph of the applicant(s);
- (2) A state certificate of examination and approval from an inspector of the sealer of weights and measures from the Wisconsin Department of Agriculture, Trade and Consumer Protection, where the applicant's business requires use of weighing and measuring devices approved by State authorities;
- (3) A current valid Wisconsin Seller's Permit;
- (4) A current auto insurance declaration page for coverage in force for the entire license period;
- (5) Applications for Mobile food Establishments shall also include the following:
 - a) A current mobile food establishment permit issued by the Wisconsin Department of Health Services, or its designated agent;
 - b) A current service base permit issued by the Wisconsin Department of Health Services, or its designated agent;
 - c) Written consent from the owners of all private property upon which it intends to operate.

(c) *Additional information required for State-registered organization.* If the applicant is employed by or acts as agent for a charitable organization required to be registered with the State, the applicant shall provide a complete copy of the charitable organization's registration materials and annual report under Wis. Stats. § 440.42 and, if applicable, the registration information and bond required under Wis. Stats. §§ 440.43 and 440.44.

Sec. 12-25. - Bond.

- (a) Every applicant for a registration who is not a resident of Dane County, or who is such a resident and represents businesses or organizations whose principal place of business is located outside of the State, shall file with the Village Clerk a surety bond for a term of one year from the date of issuance of the registration, running to the Village in the amount of \$5,000.00 with surety acceptable to the Village.
- (b) The bond shall guarantee to any Village citizen that all money paid will be accounted for and applied according to the representations of the direct seller or solicitor and any property purchased will be delivered according to the representations of the direct seller.
- (c) Action on the bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given.

(Ord. No. 2007-02, § 1(7-1-1(e)), 6-7-2007)

Sec. 12-26. - Investigation.

Upon receipt of each application, the Village Clerk shall make a complete investigation of the statements in the application. The Village Clerk shall provide the Village President with a copy of the application and the report, and shall place the matter on the next Village Board agenda if proper notice may be provided according to the Village Clerk's normal posting for such meeting.

(Ord. No. 2007-02, § 1(7-1-1(f)), 6-7-2007)

Sec. 12-27. - Issuance.

- (a) Upon submittal of a complete application, including filing of bond, the Village Clerk may issue a temporary registration valid until the Village Board considers the application.
- (b) The applicant may appear at the Village Board meeting when the application is considered and shall have an opportunity to be heard.
- (c) The Village Board shall refuse to issue a registration if it is determined pursuant to the investigation in section 12-26, 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 any other communities 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 requirement of this section.

(Ord. No. 2007-02, § 1(7-1-1(g)(1)—(3)), 6-7-2007)

Sec. 12-28. - Term of registration.

The registration shall be valid for a period of one year from the date of approval.

(Ord. No. 2007-02, § 1(7-1-1(g)(4)), 6-7-2007)

Sec. 12-29. - Registration fee.

- a) Fee: At the time the application is submitted, a fee in the amount provided in the Village Fee Schedule shall be paid to the Village Clerk to cover the cost of processing the application. No fee shall be charged to charitable organizations, their agents or employees.
- b) Penalty: Registration fees shall be paid prior to the issuance of the permit and prior to sales activity commencing. The permit fee shall be doubled in the event sales activity is started prior to issuance of a permit.

(Ord. No. 2007-02, § 1(7-1-1(h)), 6-7-2007)

Sec. 12-30. - Suspension and revocation.

- (a) Registration may be revoked or suspended by the Village Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, 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 or solicitation.
- (b) Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing or sent by certified mail to the address provided by the registrant at least seven days prior to the time set for the hearing. The notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

(Ord. No. 2007-02, § 1(7-1-1(i)), 6-7-2007)

Sec. 12-31. - Appeal.

Any person whose registration has been revoked or suspended may appeal the denial as provided in Wis. Stats. §§ 68.07 through 68.16.

(Ord. No. 2007-02, § 1(7-1-1(j)), 6-7-2007)

State Law reference— Municipal administrative procedure, Wis. Stats. § 68.001 et seq.

Sec. 12-32. - Disclosures to be made to consumer.

- (a) *Required*. In a direct sale or solicitation, a seller or solicitor shall disclose to the consumer all of the information required by this section.
- (b) *Opening disclosures*. After the initial greeting and before any other statement is made to a prospective customer, a direct seller or solicitor shall expressly disclose his or her name, the name of the company or organization with which he or she is affiliated, if any, and identify the nature of the goods or services offered to sell or purpose of organization. A direct seller or solicitor may not use any fictitious name.
- (c) *Disclosures prior to sale or solicitation*. A direct seller or solicitor shall disclose all of the following to a consumer, in writing, as applicable, before the consumer enters into any purchase contract and before the seller or solicitor accepts any payment from consumer:
 - (1) All disclosures required under Wis. Stats. § 440.455;
 - (2) The nature and the quantity of goods included in the sale;
 - (3) The total cost to purchase and receive the consumer goods or services;
 - (4) All material terms and conditions affecting the sale, receipt or use of the consumer goods or services including credit terms if any;

- (5) The name, mailing address and telephone of the principal seller;
- (6) The direct seller's policy relating to refunds, cancellations, exchanges, or repurchases;
- (7) Copies of the sale agreements; and
- (8) If the language primarily used during the sale was other than English, all disclosures shall be made in the language primarily used.

(Ord. No. 2007-02, § 1(7-1-1(k)), 6-7-2007)

Sec. 12-33. - Recordkeeping.

- (a) *Required records.* A direct seller or solicitor shall keep all of the following records related to direct sales or solicitation transactions and produce them at the request of the Village Clerk:
 - (1) Copies of all advertising, brochures, receipts, selling materials, sales and promotional materials, and documents provided to consumers;
 - (2) The name and last known address of every consumer who purchased goods or services in a direct sale or contributed money, the date the consumer purchased those goods or made the contribution, the date the direct seller delivered those goods to consumer, and the amount the consumer paid for those goods or contributed.
- (b) *Retention period.* A seller or solicitor shall keep each record required for at least two years after the seller or solicitor first creates that record.

(Ord. No. 2007-02, § 1(7-1-1(l)), 6-7-2007)

Sec. 12-34. - Right to cancel.

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 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. Stats. § 423.203; the seller shall give the buyer two copies of a typed or printed notice of that fact. The notice shall conform to the requirements of Wis. Stats. § 423.203(1)(a)—(c), (2) and (3).

(Ord. No. 2007-02, § 1(7-1-1(m)), 6-7-2007)

State Law reference— Notice to customer of right to cancel, Wis. Stats. § 423.203.

Sec. 12-35. - Prohibited acts.

- (a) *Hours restricted.* A direct seller or solicitor is 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.
- (b) *Structures with "no solicitation" signs.* A direct seller or solicitor is prohibited from calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning.
- (c) *Calling at rear door.* A direct seller or solicitor is prohibited from calling at the rear door of any dwelling or other place.
- (d) *Remaining on premises when asked to leave.* A direct seller or solicitor is prohibited from remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
- (e) *Making false, deceptive or misleading statements.* A direct seller or solicitor 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 the visit, his or her identity or the identity of the organization represented.

- (f) *Disclosure of amount actually used for charitable purposes.* A direct seller or solicitor for a charitable organization shall specifically disclose what portion of the sale price of goods being offered or contribution 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 contribution.
- (g) *Obstruction pedestrian or vehicle traffic.* No direct seller or solicitor shall impede the free use of paths and roads by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.
- (h) *Noise.* No direct seller or solicitor 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.
- (i) *Littering.* No direct seller or solicitor shall allow rubbish or litter to accumulate in or around the area in which he or she is conducting business.
- (j) *Submitting check, draft or negotiable instrument without authorization.* No direct seller or solicitor may obtain or submit for payment any check, draft or negotiable instrument drawn on a consumer's account without that consumer's express written authorization. Express written authorization may include the customer's signature on the check, draft or negotiable instrument.

(Ord. No. 2007-02, § 1(7-1-1(n)), 6-7-2007)

Sec. 12-36. - Misrepresentations.

- (a) No direct seller or solicitor may do any of the following, directly or by implication, in contacting a person for purposes of sales or solicitation:
 - (1) Misrepresenting the direct seller's or solicitor's identity, affiliation, location or characteristics.
 - (2) Misrepresent the nature, purpose or intended length of a direct sale or solicitation.
 - (3) Misrepresent the terms of the transaction, or any document related to that transaction.
 - (4) Misrepresent the cost of the goods or services offered or promoted by the direct seller, or fail to disclose material cost payable by the consumer.
 - (5) Misrepresent the nature, quantity, material characteristics, performance or efficiency of the goods or services offered or promoted by a direct seller.
 - (6) Misrepresent or fail to disclose restrictions, limitations or conditions on the purchase, receipt, use or return of the goods or services offered or promoted by a direct seller.
 - (7) Misrepresent the material terms of a direct seller refund, cancellation, exchange, repurchase or warranties policies.
 - (8) Misrepresent that the direct seller is offering consumer goods or services free of charge or a reduced price.
 - (9) Misrepresent that the direct seller is affiliated with any governmental or third party organization.
 - (10) Misrepresent any aspect of a personal investment opportunity offered by the consumer, including any aspect such as risk liquidity, earnings potential or profitability.
 - (11) Represent that the direct seller has specially selected the consumer unless such representation is true and the direct seller discloses to the consumer the specific bases on which the direct seller makes the representation.
 - (12) Represent that the direct seller is conducting a special sales promotion, is making a special limited offer to a few persons, is making a special offer for a limited period of time, or is authorized to place the offered foods or services in limited number of homes unless the

representation is true and the direct seller concurrently discloses to the consumer the specific basis on which the representation is made.

- (13) Represent that the direct seller is participating in a contest or conducting a survey unless true.
 - (14) Fail to disclose, in connection with any purported offer of free goods or services in a direct sale, any cost which the consumer must incur and any and all conditions which the consumer must meet in order to receive those free goods or services.
 - (15) Make any false, deceptive or misleading representation to the consumer.
- (b) No person may employ, solicit or cause a merchant to violate this section.

(Ord. No. 2007-02, § 1(7-1-1(o), (p)(1)), 6-7-2007)

Sec. 12-37. - Credit cards.

- (a) No direct seller or solicitor may present to or deposit into a credit card system for payment, or cause another person to present to or deposit into a credit card system for payment, any credit card sales draft generated by a direct sale or contribution that is not a sale or contribution by that seller or solicitor to the holder of that credit card.
- (b) No direct seller or solicitor may, by means of a business relationship or affiliation with a merchant, obtain access to a credit card system unless the access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer registered or authorized by the credit card system operator.

(Ord. No. 2007-02, § 1(7-1-1(p)(intro.), (2)), 6-7-2007)

Secs. 12-38—12-62. - Reserved.