

Chapter 263

DIRECT SELLERS AND SOLICITORS

[HISTORY: Adopted by the Town Board of the Town of Buchanan 11-4-1997 as Ch. 22, Art. II, of the 1997 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Streets, sidewalks and public places — See Ch. 456.

Vehicles and traffic — See Ch. 495.

§ 263-1. Registration required.

It shall be unlawful for any direct seller or solicitor to engage in direct sales or solicitations within the Town of Buchanan without being registered and licensed for that purpose as provided herein.

§ 263-2. Definitions.

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

APPLICANT — Each individual applying for registration and licensing as a direct seller or solicitor.

CHARITABLE ORGANIZATION — Any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation for which there is provided proof of tax exempt status pursuant to Section 501(c)(3) or (4) of the United States Internal Revenue Code.

CLERK — The Town Administrator/Clerk or Deputy Clerk. [Amended 8-17-2010 by Ord. No. 2010-03]

DIRECT SELLER — An individual who, for himself/herself or for a partnership, association or corporation, sells goods or services or takes sales orders for the later delivery of goods or services 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, canvassers and transient merchants. The sales of goods and services includes donations requested or required by the direct seller for the retention of goods or services 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 or one representing a merchant who, for at least one year prior to the submission of an application pursuant to this chapter, has continuously operated an established place of business in this Town or has continuously resided in this Town and now does business from his/her residence.

REGISTRATION — Each individual registered by the Administrator/Clerk and to whom a license has been issued.

SOLICITOR — Any individual who, for himself/herself or any other person, organization, society, association or corporation, personally solicits money, property or financial assistance of any kind of persons other than members of such organization, society, association or corporation.

§ 263-3. Exemptions.

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

- (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 farmer or truck gardener selling agricultural products of the farm or garden occupied or cultivated by such person.
- (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 this county and who delivers such goods in his or her 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 has had, a prior business transaction, such as a prior sale or credit arrangement, with a prospective customer.
- (7) Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant by law.
- (8) Any person who claims to be a permanent merchant but against whom complaint has been made to the Administrator/Clerk that such person is a transient merchant, provided that there is submitted to the Administrator/Clerk proof that such person has purchased or leased for at least one year 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 year prior to the date complaint was made.
- (9) Any person under 18 years of age who is selling goods or services on behalf of a charitable, educational, religious or social organization, including but not limited to the Girl Scouts, Brownies, Boy Scouts, school groups or sports teams.

B. Charitable organizations.

- (1) Charitable organizations shall be exempt from the requirements set forth in § 263-4A and D and § 263-6A if the organization has provided the individual representing it with credentials stating the name of the organization, the name of the representative and the purpose of the solicitation and, provided, further, that said individuals provide the Administrator/Clerk with the following information:
 - (a) The individual's name and permanent address.
 - (b) The name and address of the organization represented.
 - (c) The name and address of the officers or directors of the organization.
 - (d) The nature of the sales or solicitations.
 - (e) Proposed dates and times of sales or solicitations.
 - (f) Social security number.
 - (g) Driver's license number.
 - (2) A license operative for the dates provided to the Administrator/Clerk shall be issued without charge upon compliance with the foregoing. The Administrator/Clerk shall then forward the information and notice of the issuance of a license to the Outagamie County Sheriff.
- C. Any religious organizations for which there is provided proof of tax exempt status pursuant to Section 501(c)(3) of the United States Internal Revenue Code shall be exempt from the requirements set forth in Subsection A(1) and (4) and § 263-5. The provisions of this section above shall be applicable to such organizations.
- D. Veterans.
- (1) Any veteran who holds a special state license pursuant to § 440.51, Wis. Stats., shall be exempt from the provisions of § 263-6, provided that such veteran provides the Administrator/Clerk with the following information:
 - (a) The veteran's name and permanent address.
 - (b) The nature of the sale or solicitations.
 - (c) Proposed dates and times of sales or solicitations.
 - (2) The Administrator/Clerk shall then forward the above information to the Outagamie County Sheriff.

§ 263-4. Registration requirements.

- A. Applicants for licenses must complete and return to the Administrator/Clerk a registration form furnished by the Administrator/Clerk which shall require the following information:
- (1) Name, permanent address, telephone number and temporary address, if any.

- (2) Age, height, weight, and 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 sales or solicitations will be conducted, if any.
 - (5) Nature of sales or solicitations to be conducted and a brief description of the goods and/or services offered.
 - (6) Proposed dates and times of sales or solicitations.
 - (7) Proposed method of delivery of goods, if applicable.
 - (8) Make, model and license number of any vehicle to be used by applicant in the conduct of sales or solicitations.
 - (9) Last three cities, villages, and towns where applicant conducted similar sales or solicitations.
 - (10) Place where applicant can be contacted for at least seven days after leaving this Town.
 - (11) Statements as to whether applicant has been convicted of any crime or ordinance violation related to applicant's sales or solicitation or other transient merchant activities within the last five years, the nature of the offense and the place of conviction.
- B. Applicants shall present the following items to the Administrator/Clerk for examination:
- (1) A driver's license or some other acceptable photo identification 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 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.
 - (4) Applicant's social security card.
- C. No application shall be processed until the nonrefundable application fee has been paid to the Administrator/Clerk to cover the costs of processing said application. The fee shall be paid in cash or cashier's check. Said fee shall be as set in the Town

Fees and Licenses Schedule¹ if the applicant is a resident of this Town or the organization represented by the applicant has been conducting its business activities in this Town continuously for one year prior to submission of the application. The fee for all other applicants shall be as set in the Town Fees and Licenses Schedule. [Amended 8-17-2010 by Ord. No. 2010-03]

- D. No applications shall be processed until the applicant signs a statement appointing the Administrator/Clerk or his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale, service performed or solicitation by the applicant in connection with the direct sales or solicitation activities of the applicant in the event the applicant cannot, after reasonable effort, be served personally.

§ 263-5. Investigation; denial of application.

- A. Upon receipt of a completed registration form, the Administrator/Clerk shall refer it to the Outagamie County Sheriff to make an investigation.
- B. The Administrator/Clerk shall refuse to issue a license to the applicant for any of the following reasons:
 - (1) The application contains any material omission or materially inaccurate statement.
 - (2) Complaints of a material nature have been received against the applicant by authorities in any of the last three cities, villages, or towns in which the applicant conducted similar business.
 - (3) The applicant was convicted of a crime or statutory violations within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling or solicitations.
 - (4) The applicant failed to comply with any applicable provision of § 263-4 above.
- C. Any person denied application for a license may appeal such actions by filing with the Town Board, within 14 days after written notice of the denial, a written statement requesting a hearing and setting forth grounds for the appeal. The Town Board shall set a time and place for the hearing. Written notice of the time and place of the hearing shall be given to the applicant at least 72 hours prior to the time set for the hearing.

§ 263-6. Registration and issuance of license.

- A. Upon compliance with the foregoing requirements, filing of a bond and payment of the license fee as hereinafter set forth, the Administrator/Clerk shall register the applicant as a direct seller or solicitor and issue a license to the applicant. The license shall be operative only during the days requested on the registration form.

¹. Editor's Note: The Town Fees and Licenses Schedule is on file in the office of the Town Administrator/Clerk.

- B. Such license shall contain the signature of the Administrator/Clerk, the name and address of the direct seller or solicitor, the type of goods or services being sold or the nature of the solicitation, the dates during which the license is operative and the license number of any vehicle used for sales or solicitation.
- C. Registrants shall exhibit their license at the request of any citizen or police officer.
- D. Every applicant who intends to take sales orders and down payments for the later delivery of goods and services and is not a resident of Outagamie County, Wisconsin, or who is such a resident and represents a business or organization whose principal place of business is located outside the State of Wisconsin, shall file with the Administrator/Clerk a surety bond, for a term of one year from the date of issuance of license, running to the Town in the amount of \$5,000 with surety acceptable to the Town Chairperson, conditioned that the applicant comply with all applicable ordinances of this Town and statutes of the State of Wisconsin regulating peddlers, canvassers, solicitors and transient merchants. Such bond shall guarantee to any citizen of this Town that all money paid as a down payment will be accounted for and applied according to the representations of the seller and that the property purchased will be delivered according to the representations of the seller. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given. The surety may, pursuant to a court order, pay the face amount of the bond to the clerk of court in which suit is commenced and be relieved of all further liability.
- E. Every applicant shall pay a license fee per day as set in the Town Fees and Licenses Schedule,² in cash or cashier's check, prior to license issuance. [Amended 8-17-2010 by Ord. No. 2010-03]

§ 263-7. Prohibited practices; disclosure requirements.

- A. Prohibited practices.
 - (1) A direct seller or solicitor shall be prohibited from:
 - (a) Calling at any dwelling or other place between the hours of 7:00 p.m. and 10:00 a.m. except by previously arranged appointment.
 - (b) 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 the rear door of any dwelling place.
 - (d) 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 or solicitor shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods or services offered for sale, the purpose of his/her visit, his/her identity, or of the identity of the organization he/she represents. A direct seller

². Editor's Note: The Town Fees and Licenses Schedule is on file in the office of the Town Administrator/Clerk.

representing a charitable or religious organization shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable or religious purpose for which the individual is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods or services.

- (3) No direct seller or solicitor shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales or solicitations are made from vehicles, all traffic and parking regulations shall be observed. No direct seller or solicitor shall have any exclusive right to any location in the public streets, nor shall any be permitted a stationary location thereon in excess of 15 minutes, nor shall any be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. Any move from a stationary location shall be a place not less than 100 feet from such location, and the seller or solicitor shall not return to within 100 feet of any previously occupied location within four hours of having moved from said location. For the purpose of this section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested and the public impeded or inconvenienced.
- (4) No direct seller or solicitor shall make any loud noises or use any sound amplifying device to attract customers or donors, if the noise produced is capable of being plainly heard outside a one-hundred-foot radius of the source.
- (5) No direct seller or solicitor shall allow rubbish or litter to accumulate in or among the area in which he/she is conducting business or making solicitations.

B. Disclosure requirements.

- (1) After the initial greeting and before any other statement is made to a prospective customer or donor, a direct seller or solicitor 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 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 more than \$25, 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.
- (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.

§ 263-8. Records of violations.

The Outagamie County Sheriff shall report to the Administrator/Clerk all convictions for violations of this chapter, and the Administrator/Clerk shall note any such violation on the record of the registrant convicted. The Administrator/Clerk shall note any complaint or report of any alleged violation made by a resident of this Town to a police officer.

§ 263-9. Revocation of license.

The registrant's license may be revoked by the Town Board after notice and hearing 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 solicitation, violated any provision of this chapter 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 solicitations. Written notice of the hearing shall be served personally 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 such acts or omissions upon which the hearing will be based.

§ 263-10. Violations and penalties. [Amended 8-17-2010 by Ord. No. 2010-03]

Any person who shall violate any provisions of this chapter shall, upon conviction thereof, be punishable as provided in § 1-7 of the Code. Each violation of any provision of this chapter shall constitute a separate offense.