

## Chapter 253

### DIRECT SELLERS AND SOLICITORS

**[HISTORY: Adopted by the Village Board of the Village of Plover 6-4-1985 as § 12.07 of the 1985 Code. Amendments where noted where applicable.]**

#### GENERAL REFERENCES

Coin, precious metal and secondhand gun dealers — See Ch. 241.

Junk dealers and salvage yards — See Ch. 340.

Rummage and garage sales — See Ch. 431.

#### § 253-1. Registration and license required.

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

#### § 253-2. Definitions.

In this chapter, the terms used shall be defined as follows:

**CHARITABLE ORGANIZATION** — Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, but shall not include religious organizations.

**DIRECT SELLER** — Any person who sells goods or services or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of said person and shall include, but not be limited to, peddlers, solicitors and transient merchants. For purposes of this chapter, the acceptance of a donation in exchange for goods, or an order for goods, shall be deemed an act requiring compliance with all of the regulatory provisions of this chapter, including registration and the posting of a bond.

**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, has continuously operated an established place of business in the Village or has continuously resided in the Village and now does business from his residence.

#### § 253-3. 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 his 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 on other than a one-time basis with the prospective customer.
- G. Any person selling, or offering for sale, a service not connected 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 Village Clerk proof that such charitable organization is registered under § 440.41, Wis. Stats. However, any charitable organization not registered under § 440.41, 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 a complaint has been made to the Village Clerk that such person is a transient merchant, provided that there is submitted to the Village Clerk proof that such person 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 Village for at least one year prior to the date the complaint was made.
- K. Any religious organization having tax-exempt status under § 501(c)(3) of the United States Internal Revenue Code upon submitting proof thereof to the Village Clerk.

**§ 253-4. Application.**

- A. Applicants for registration or licensing must complete and return to the Village Clerk a form furnished by the Clerk.
- B. Applicants shall present to the Village Clerk for examination:
  - (1) A driver's license or some proof of identity as may be reasonably required by the Village Clerk.
  - (2) A state certification of examination and approval from the Sealer of Weights and Measures where the applicant's business requires use of weights and measuring devices approved by state authorities.
  - (3) A state health officer's certificate where the applicant's business involves the handling of food or clothing and is required to be certified under state law, such certificate to

state that the 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. At the time the registration is returned, an investigation fee as provided in the Village Fee Schedule shall be paid to the Village Clerk to cover the cost of processing said registration.<sup>1</sup> Religious and charitable organizations are exempt from paying said fee. The applicant shall sign a statement appointing the Village Clerk his 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 that the applicant cannot, after reasonable effort, be served personally. Upon payment of said fee and the signing of said statement, the Village Clerk shall register the applicant as a direct seller and date the entry. Said registrations shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in § 253-5B below or forfeiture as provided in § 253-10 below.

**§ 253-5. Investigation; denial of application.**

- A. Upon receipt of a completed registration form, the Clerk shall immediately refer it to the Chief of Police to make an investigation. The Chief of Police or his designee shall complete the investigation and file a report with the Clerk within 72 hours. If, as a result of the investigation required under this section, the applicant's business or character is found to be unsatisfactory, the Chief of Police shall endorse on said application his disapproval and his reasons for the same and return the application to the Clerk, who shall notify the applicant that his application was not approved and no license will be issued.
- B. The 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) 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 solicitation.
  - (3) The applicant failed to comply with any applicable provision of § 253-4B of this chapter.
- C. In the event that the Clerk shall refuse to issue the applicant a license, the Clerk shall provide the applicant an opportunity to refute said reasons for denial of the license. After the Clerk has made a final determination, he shall either issue the license or provide the applicant with written reasons for refusing to issue the license.
- D. Any person denied application for a license may appeal such action by filing with the Administrative Review Appeals Board within 14 days after written notice of the denial a written statement requesting a hearing and setting forth the grounds for the appeal. The Administrative Review Appeals 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 24 hours

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1. Editor's Note: See Ch. A600, Fees.

prior to the time set for the hearing.<sup>2</sup>

**§ 253-6. Registration and issuance of license.**

- A. Upon compliance with the foregoing requirements and filing of a bond, if applicable, the Clerk shall register the applicant as a direct seller, transient merchant or solicitor and issue a license to the applicant. The license shall be operative only during the days requested on the registration form.
- B. Such license shall contain the signature of the Clerk, the name and address of the direct seller, transient merchant 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 a later delivery of goods or services and is not a resident and represents a business or organization whose principal place of business is located outside of the State of Wisconsin shall file with the Clerk a surety bond for a term of one year from the date of issuance of license, running to the Village, in the amount of \$500 with surety acceptable to the Village President, conditioned that the applicant comply with all applicable ordinances of this Village and statutes of the State of Wisconsin regulating peddlers, canvassers, solicitors and transient merchants. Such bond shall guarantee to any citizen of this Village 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 Courts in which suit is commenced and be relieved of all further liability.

**§ 253-7. Prohibited practices; disclosure requirements.**

- A. Prohibited practices.
  - (1) A direct seller or solicitor 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 visit, his identity or the identity of the organization he represents. A charitable or religious organization direct seller shall specifically disclose what portion of the free donation or the sale price of goods being offered will actually be

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2. Editor's Note: See also Ch. 6, Administrative Review.

used for the charitable or religious 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 one-hundred-foot radius of the source.
- (5) No direct seller 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 direct seller or solicitor shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he 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 if it involves the extension of credit of more than \$25 or is a cash transaction, in accordance with the procedure as set forth in § 423.203, Wis. Stats., and 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 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.

**§ 253-8. Record of violations.**

The Chief of Police shall report to the Village Clerk all convictions for violation of this chapter, and the Clerk shall note any such violation on the record of the registrant convicted.

**§ 253-9. Revocation of license.**

- A. Any license issued under this chapter may be revoked by the Village Board after notice and hearing if the registrant made any material omission or materially inaccurate statement in the application for a license, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, 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.
- B. Written notice of the hearing shall be mailed to the seller at the permanent address shown

on the registration at least 15 days, or shall be served personally on the registrant at least 72 hours, prior to the time for the hearing; such notice shall contain the time and place of the hearing and a statement of the facts upon which the hearing will be based.

**§ 253-10. Violations and penalties.**

Any person convicted of violating any provision of this chapter shall forfeit not less than \$10 nor more than \$200 for each violation plus costs of prosecution. Each violation shall constitute a separate offense.