

## 12.06 Direct sellers.

- (1) Registration Required. It shall be unlawful for any direct seller to engage in sales within the City of Elkhorn without being registered for that purpose as provided herein.
- (2) Definitions. In this section:
  - (a) "Direct seller" means any individual who, for him/herself, or for a partnership, association or corporation engages in the retail sale of merchandise 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. 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 sale conducted by or for a resident farmer of personal property used on the farm, or the sale of produce by a resident of this state.
  - (b) "Permanent merchant" means any person who, for at least one year prior to the consideration of the application of this ordinance to said merchant has continuously:
    1. Operated an established place of business in the City of Elkhorn; or
    2. Resided in the City of Elkhorn and now does business from his/her residence.  
(See Section 17.5-2(9) Supplemental Use Regulation)
  - (c) "Merchandise" means and includes 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.
  - (d) "Charitable organization" means and includes any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation, or one purporting to be such.
  - (e) "Clerk" means the City Clerk.
- (3) Exemptions. The following shall be exempt from all provisions of this section:
  - (a) Any person delivering merchandise to regular customers on established routes;
  - (b) Any person selling merchandise at wholesale to dealers in such merchandise;
  - (c) 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 City and who delivers such merchandise in their regular course of business;
  - (d) 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 said person;
  - (e) 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;
  - (f) 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;
  - (g) Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization, provided that they submit to the Clerk proof that such charitable organization is registered under Section 440.41, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under

- Section 440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this section;
- (h) Any person who claims to be a permanent merchant, but against whom complaint has been made to the Clerk that such person is a direct seller; 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 has conducted business in the market or for at least one year prior to the date the complaint was made;
  - (i) Any individual licensed by an examining board as defined in Section 15.01(7), Wis. Stats.
  - (j) This section does not apply to direct sellers while doing business at special events authorized by the Common Council.
- (4) Information Required for Registration. Applicants for registration must complete and return to the Clerk a registration form furnished by the Clerk, which shall require the following information:
- (a) Name, permanent address and telephone number, and temporary address, if any;
  - (b) Date of birth, height, weight, color of hair and eyes;
  - (c) Driver's license number or some other proof of identity as may be reasonably required;
  - (d) 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;
  - (e) Temporary 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;
  - (f) Nature of business to be conducted and a brief description of the merchandise, and any services offered;
  - (g) Proposed methods of delivery of merchandise, if applicable;
  - (h) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;
  - (i) Most recent cities, villages, towns, not to exceed 3, where applicant conducted his/her business;
  - (j) Place where applicant can be contacted for at least 6 months after leaving this City;
  - (k) Statement as to whether applicant has been convicted of any crime of ordinance violation related to applicant's direct sellers business within the last 5 years, and the nature of the offense and the place of conviction.
- (5) Documents to be Presented for Examination. Applicants shall present to the Clerk for examination:
- (a) A driver's license or some other proof of identity as may be reasonably required;
  - (b) A local 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;
  - (c) A State traveling retail food license if the applicant's business is involved in the sale of food, but is not engaged in food processing;
  - (d) Wisconsin seller's permit;
  - (e) A certificate of insurance naming the City of Elkhorn as additionally insured, if such applicant's business involves soliciting for sale, or making sales of merchandise on

public sidewalks, parks or roads. The certificate of insurance shall certify that the applicant has liability coverage on the vehicles to be used of at least \$100,000.00 against bodily injury or death to any person, and \$300,000.00 for any one accident over \$50,000.00 against property damage. Such certificate of insurance shall be filed with the application for direct sellers permit.

- (6) Application for License. The application for any license shall be made to the City Clerk at least 10 days prior to the issuance of said license.
- (7) Application Fee. At the time of the application for a direct sellers permit, a nonrefundable fee of \$50.00 shall be paid to the City of Elkhorn to cover the costs of investigation and processing such application.
- (8) Valid Permit. Unless revoked or suspended, the sellers permit shall be valid for a period not exceeding 120 days.
- (9) Valid Registration. The applicant shall sign a statement appointing the Clerk [or] 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. Upon payment of said fee and the signing of said statement, the Clerk 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 subsection (10)(b), below.
- (10) Investigation.
  - (a) Upon receipt of each application, the Clerk shall refer it immediately to the Chief of Police or his designee, who shall make and complete an investigation of the statements made in such registration. The Police Department shall conduct an investigation of the applicant, including, but not limited to, requesting information from the state, surrounding municipalities, and/or any community where the applicant has previously resided concerning applicant's arrest and conviction record.
  - (b) The Clerk 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 most recent cities, villages and towns, not exceeding 3, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation, or ordinance violation within the last 5 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 12.06(5), above.
- (11) Appeal. Any person refused or 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 Sections 68.07 through 68.16, Wis. Stats.
- (12) Regulation of Direct Sellers.
  - (a) Prohibited Practices.
    1. A direct seller shall be prohibited from: conducting sales or 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 characteristics of any merchandise 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 the merchandise 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 merchandise.

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 solicit orders for the sale of, or make sales of merchandise on any public sidewalk, park, or street, without filing with the City a certificate of insurance by an insurance company authorized to do business in the State of Wisconsin.
5. 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 100' radius of the source.
6. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.
7. Direct sales are prohibited in the B-1 Central Business District.

(13) Disclosure Requirements.

- (a) 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 merchandise or services he/she offers to sell.
- (b) If any sale of merchandise is made by a direct seller, or any offer for the later delivery of merchandise 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 Section 423.203, Wis. Stats.; the seller shall give the buyer 2 copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Section 423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.
- (c) If the direct seller takes a sales order for the later delivery of merchandise, 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.

(14) Records. The Chief of Police shall report to the Clerk all convictions for violation of this ordinance and the Clerk shall note any such violation on the record of the registrant convicted.

(15) Revocation of Registration.

- (a) Registration may be revoked by the Legislative and Regulatory Committee 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 transient sales, violated any provision of this ordinance or was convicted of any crime or ordinance or

statutory violation which is directly related to the registrant's fitness to engage in selling. The permit may also be revoked if the direct seller conducts peddling or solicitation activities contrary to the provisions contained in the permit or in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public.

- (b) Written notice of the hearing shall be served personally or pursuant to subsection (4) (c), above, 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.
- (16) Penalty. Any person adjudged in violation of any provision of this ordinance shall forfeit not less than \$10.00, or more than \$1,000.00 for each violation per day plus costs of prosecution. Each violation shall constitute a separate offense.
- (17) Effective Date. The ordinance codified in this section shall take effect upon passage and publication.
- (18) Severance Clause. The provisions of the ordinance codified in this section are declared to be severable, and if any section, sentence, clause or phrase of the ordinance codified in this section shall for any reason be held invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of the ordinance codified in this section; they shall remain in effect, it being the legislative intent that the ordinance codified in this section shall stand notwithstanding the invalidity of any part. (Ord. No. 11-13, 2011; Ord. No. 06-24, § 1, 2006; Ord. No. 03-19, 2003.)