

Chapter 57

Direct Sellers

[HISTORY: Adopted by the Town Board of the Town of Cleveland at time of adoption of Code (see Ch. 1, General Provisions, Art. II). Amendments noted where applicable.]

§ 57-1 Registration required.

No direct seller shall engage in direct sales within the Town of Cleveland without being registered for that purpose as provided herein.

§ 57-2 Definitions.

For the purposes of this chapter, the following words and phrases shall be defined as indicated:

CHARITABLE ORGANIZATION

Includes any benevolent, philanthropic, patriotic or eleemosynary person or entity or one purporting to be.

CLERK

The Town Clerk.

DIRECT SELLER

Any individual who, for himself 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 such 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 goods provided incidental to services offered or sold.

MERCHANT, PERMANENT

A direct seller who, for at least one year prior to the consideration of the application of this chapter to such merchant, has continuously operated an established place of business in the Town, or has continuously resided in the Town and now does business from his residence.

MERCHANT, TRANSIENT

One who engages in the sale of merchandise at any place in the Town temporarily, and shall include the sale of fruit and vegetable products.

§ 57-3 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 in the Town.
- 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 such 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 such 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 is conducting business, or proof that such person has conducted such business in the Town for at least one year prior to the date complaint was made.

§ 57-4 Registration procedure.

- A. Applicants for registration shall complete and return to the Clerk a registration form furnished by the Clerk which shall require the following information:
 - (1) Name, permanent address and 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 business shall be conducted, if any.
- (5) Name 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 of any vehicle to be used by the applicant in the conduct of his business.
- (8) Last cities, villages, and towns, not to exceed three, where the applicant conducted similar business.
- (9) Place where the applicant can be contacted for at least seven days after leaving the Town.
- (10) Statement as to whether the applicant has been convicted of any crime or ordinance violation related to the applicant's direct seller business within the last five years, the nature of the offense and the place of conviction.

B. Applicants shall present to the Clerk 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 the applicant's business requires use of weighing 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 shall 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 registration is made.

C. At the time the registration is returned, a fee of \$35 shall be paid to the Clerk to cover the cost of processing such registration, and the applicant shall sign a statement appointing the 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, if the applicant cannot, after reasonable effort, be served personally. Upon payment of the fee and the signing of the statement, the Clerk shall register the applicant as a direct seller and date the entry. Such registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in

§ **57-5B** below.

§ 57-5 **Investigation.**

- A. Upon receipt of each application, the Clerk may complete an investigation of the statements made in such registration.
- 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 last cities, villages and towns, not exceeding three, 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 applicable provision of § **57-4B** above.

§ 57-6 **Appeals.**

Any person denied registration may appeal the denial through the appeal procedure provided by Ch. 68, Wis. Stats.

§ 57-7 **Prohibited practices; disclosure requirements.**

- 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 visit, his identity or the identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered shall actually be used for the charitable purpose for which the organization is soliciting. Such 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 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 the transaction if it involves the extension of credit or is a cash transaction or 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 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.

§ 57-8 Revocation of registration.

A. Registration 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; 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 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 the hearing and a statement of the acts upon which the hearing will be based.