

# Chapter 4

## Direct Sellers

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### Sec. 7-4-1 Registration Required.

It shall be unlawful for any direct seller to engage in direct sales within the City of Onalaska without being registered for that purpose as provided herein.

### Sec. 7-4-2 Definitions.

In this Chapter the following definitions shall be applicable:

- (a) **Direct Seller.** Any individual who, for him/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, 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.
- (b) **Permanent Merchant.** A direct seller who, for at least one (1) year prior to the consideration of the application of this Chapter to said merchant:
  - (1) Has continuously operated an established place of business in this City; or
  - (2) Has continuously resided in this City and now does business from his/her residence.
- (c) **Goods.** Shall include personal property of any kind and shall include goods provided incidental to services offered or sold.
- (d) **Charitable Organization.** Shall include any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such, but shall not include religious organizations.
- (e) **Clerk.** The City of Onalaska City Clerk.
- (f) **Person.** All humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for the same purpose or objective.

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#### **Sec. 7-4-3 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 their 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, 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 said organization, provided that there is submitted to the City Clerk proof that such charitable organization is registered under Sec. 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 complaint has been made to the City Clerk that such person is a transient merchant, provided that there is submitted to the City Clerk proof that such person has leased for at least one (1) year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in this City for at least one (1) year prior to the date complaint was made.

#### **Sec. 7-4-4 Registration.**

- (a) **Registration Information.** Applicants for registration must complete and return to the City Clerk a registration form furnished by the City Clerk which shall require the following information:

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- (1) Name, permanent address and telephone number, and temporary address, if any;
  - (2) Height, weight, color of hair and eyes, and date of birth;
  - (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 will be conducted, if any;
  - (5) Nature 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 applicant in the conduct of his business;
  - (8) Last cities, villages, town, not to exceed three (3), where applicant conducted similar business just prior to making this registration.
  - (9) Place where applicant can be contacted for at least seven (7) days after leaving this City;
  - (10) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five (5) years, the nature of the offence and the place of conviction.
- (b) **Identification; Licenses.** Applicants shall present to the City 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 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 the 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 ninety (90) days prior to the date the application for license is made.
- (c) **Registration Fee and Miscellaneous.**
- (1) At the time the registration is returned, a fee shall be paid to the City Clerk to cover the cost of processing said registration. Each and every member of a group must file a separate registration form. The fee for a direct seller's, solicitor's or canvasser's license shall be as set forth on the City of Onalaska Fee Schedule. All license fees will be reviewed annually. All persons within a group must comply with the other provisions of this Chapter. A license granted hereunder shall be valid for a period of (90) days from the date of issuance.
  - (2) The applicant shall sign a statement appointing the City 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 the applicant cannot, after reasonable effort, be served personally.
  - (3) Upon payment of said fee and the signing of said statement, the City Clerk shall register the applicant as a direct seller and the date of entry. The registration shall be valid for a period of ninety (90) days from the date of entry, subject to subsequent refusal as provided in Sec. 7-4-5(b) below.

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### **Sec. 7-4-5 Investigation.**

- (a) Upon receipt of each application, the City Clerk may refer it immediately to the Chief of Police who may make and complete an investigation of the statements made in such registration.
- (b) The City 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 (3), in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five (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 7-4-4(b) above.

### **Sec. 7-4-6 Appeal.**

Any person 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 Secs. 68.07 through 68.16, Wis. Stats.

### **Sec. 7-4-7 Regulation of Direct Sellers.**

- (a) **Prohibited Practices.**
  - (1) Direct Sellers are hereby prohibited from:
    - a. Calling at any dwelling or other place between the hours of 8:00 p.m. and 9:00 a.m. from April 16 to October 14, except by appointment;
    - b. Calling at any dwelling or other place between the hours of 4:30 p.m. and 9:00 a.m. from October 15 to April 15, except by appointment;
    - c. Calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning;
    - d. Calling at the rear door of any dwelling place; or
    - e. 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 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.

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- (3) No direct seller shall impede the free use of sidewalks and streets by pedestrians or vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed. No direct seller shall be upon any street used as a parade route between the time of one-half (1/2) hour immediately preceding the commencement of any scheduled parade until after the conclusion of any scheduled parade.
  - (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 (100) 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.
  - (6) Sales of any type of device that expels a projectile, including but not limited to, silly string, marshmallows, or other type of projectile are prohibited.
- (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 with which he is affiliated, if any, and the identity of the goods or services he offers to sell. The direct seller shall also carry his registration on his person at all times when he is engaged in selling and display the same to a prospective customer upon request.
  - (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 or is a cash transaction of more than Twenty-five Dollars (\$25.00), in accordance with the procedure as set forth in Sec. 423.203, Wis. Stats.; the seller shall give the buyer two (2) copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 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.

### **Sec. 7-4-8 Records.**

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

### **Sec. 7-4-9 Revocation of Registration.**

- (a) Registration may be revoked by the Chief of Police after notice and an opportunity to be heard if the registrant has 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

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which is directly related to the registrants' fitness to engage in direct selling. If a registration of an individual is so revoked, the Chief of Police, in his sole discretion, may also revoke the registration of the company or organization with which the individual is affiliated as well as the registration of all other individuals affiliated with said company or organization.

- (b) Written notice of the hearing shall be served personally on the registrant at least seventy-two (72) hours prior to the time set for the hearing; such notice contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

