

CHAPTER 889. TRANSIENT MERCHANTS, SOLICITATION IN RESIDENTIAL NEIGHBORHOODS, AND MOBILE CONCESSION STREET VENDORS.

889.01. Registration and License Required. It shall be unlawful for any Transient Merchant or Mobile Concession Street Vendor to engage in sales within the City of Ashland without being registered and licensed for that purpose as provided herein. It shall be unlawful for any Transient Merchant or any Permanent Merchant to solicit in residential neighborhoods without being registered and licensed for that purpose as provided herein.

889.02. Definitions.

(a) “Transient merchant” means any individual who engages in the retail sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. 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 or other perishable products at retail or wholesale by a resident of this state.

(b) “Permanent Merchant” means any person who, for at least six months prior to the consideration of the application of this chapter to said merchant: (1) has continuously operated an established place of business in the local trade area among the communities bordering the place of sale, or (2) has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his/her residence.

(c) “Door-to-Door Solicitor” means any person, whether a permanent or transient merchant, who attempts to sell merchandise directly to residents by physically calling upon their dwelling place.

(d) “Merchandise” shall include 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.

(e) “Mobile Concession Street Vendor” shall include individuals and organizations that engage in the sale of concessions from motor vehicles, self-propelled vehicles, manually propelled vehicles, and trailers. Concessions are defined foods and beverages intended to be consumed at the point of purchase.

(f) “Charitable Organization” shall include any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation, or one purporting to be such.

(g) “Clerk” means the City Clerk.

889.03. 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 merchandise directly to other established businesses within the City of Ashland;

(c) Any person selling agricultural products which the person has grown or any fish which the person has caught;

(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 selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;

(f) Any person holding a sale required by statute or by order of any court; any person conducting a bona fide auction sale pursuant to law; any person conducting a garage sale, yard sale, or estate sale at a private residence;

(g) Any employee, officer or agent of a charitable organization who engages in direct sales or solicitation of donations for or on behalf of said organization, provided that there is submitted to the clerk proof that such charitable organization is registered under sec. 202.12, Wis. Stats., and provided such organization shall comply with the provisions below

(1) Before any direct sales or solicitation for donations can take place, each such charitable organization must file a sworn application, in writing, on a form furnished by the City Clerk, which shall provide the following information:

(A) Name of organization.

(B) Names and addresses of officers of the organization.

(C) Description and approximate dates of the solicitation event(s).

(D) Names of individuals to be involved in solicitation.

(E) Proof of charitable status.

(2) Upon being satisfied that such organization, association or corporation is a bona fide group within the parameters of this chapter, the Clerk shall issue a permit without charge to such organization to solicit in the City. The clerk shall also issue to such organization, an official card for each individual to be involved in the solicitation, upon which shall be inscribed the name of each member. The card shall also contain the name of the organization and dates and purpose of the solicitation. This permit can be applied for on an annual basis and shall expire June 30 of each year.

(h) Any individual licensed by an examining board as defined in s. 15.01(7), Wisconsin Statutes.

(i) Any persons or organizations operating a concession authorized by a non-profit association in connection with a fair, festival or celebration which is being held under the direction of that non-profit association. Persons or organizations are prohibited from operating a concession or selling products or services within the defined fair, festival or celebration area without authorization from the non-profit association sponsoring the event. The entity sponsoring the event shall submit a description of the defined festival area to the Police Chief or his designee for approval.

(j) Any person 15 years old or under who is operating a stand to sell lemonade or similar beverages at the person's home or in the public right of way adjacent to the person's home, and any person 15 years old or under assisting that person, provided that the police department may order such stand closed if there is reason to believe the stand poses a threat to health or safety, in which case the person may apply for a license under this chapter.

889.04. Transient Merchant & Door-to-Door Solicitor Applications

(a) Applicant Information. Applicants for a transient merchant or door-to-door solicitor license must complete and return to the clerk an application 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, color of hair and eyes;

(3) Name, address and telephone number of the person, firm, association or corporation that the transient merchant 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 merchandise, and any services offered;

(6) Proposed methods of delivery of merchandise, if applicable;

(7) Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;

(8) Most recent cities, villages, towns, not to exceed three, where applicant conducted his/her business;

- (9) Place where applicant can be contacted for at least seven 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 years, and the nature of the offense and the place of conviction.

(b) Required Documents. Applicants for a transient merchant or door-to-door solicitor license shall present to the clerk for examination:

- (1) A driver's license or some other proof of identify 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 90 days prior to the date the application license is made.

(c) Fee. At the time the transient merchant or door-to-door solicitor application is returned, a fee shall be charged in accordance with Chapter 165, the City of Ashland Comprehensive Fee Schedule, to cover the cost of processing said application. If said application is approved, the application fees will be charged as provided for in the City of Ashland Comprehensive Fee Schedule for each day that business is carried on in the City of Ashland. The Clerk shall issue an official card for each individual to be involved in the solicitation, upon which shall be inscribed the name of each solicitor. The card shall also contain the dates and purpose of the solicitation.

(d) Agent for service of process. The applicant shall sign a statement appointing the clerk 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.

889.05. Mobile Concession Street Vendors Applications. A Mobile Concession Street Vendor shall not operate within the City without first securing a license from the City. Applications shall be made to the City Clerk and acted upon by the Common Council. The fee for a Mobile Concession Street Vendor shall be charged in accordance with Chapter 165, the City of Ashland Comprehensive Fee Schedule. The fee shall be waived for non-profit organizations.

889.06. Investigation

(a) Referral to Police. Upon receipt of each application, the 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) Denial of license. The clerk shall refuse to license 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 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 this chapter.

889.07. Appeal. Any person refused or denied a license may appeal the denial through the Common Council.

889.08. Prohibited Practices.

(a) A transient merchant or door-to-door solicitor shall be prohibited from: calling at any dwelling or other place between the hours of 8:00 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.

(b) A transient merchant or door-to-door solicitor 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 transient merchant 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.

(c) No transient merchant or door-to-door solicitor shall sell or offer for sale any goods, wares, merchandise or produce of any kind from a stand or vehicle while the same is placed or parked upon any public street except to make deliveries from house to house or to places of business. No signs or goods, wares, merchandise or produce of any sort shall be set, placed or displayed within any portion of the right-of-way for any City of Ashland street.

(d) No transient merchant or door-to-door solicitor shall sell or offer to sell any goods, wares, merchandise or produce of any kind in any City of Ashland park premises, including parking lots associated therewith without the prior written approval of the City of Ashland Park Board.

(e) No licensee nor any person in his behalf, shall use any sound amplifying device for the broadcasting of words upon any of the streets, alleys, parks or other public places of the City or upon private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks, or other public places, for the purpose of attracting attention to any goods, wares, or merchandise which such licensee proposes to sell.

(f) No licensee shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

889.09. Disclosure Requirements

(a) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant or door-to-door 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 merchandise or services he/she offers to sell.

(b) If any sale of merchandise is made by a transient merchant or door-to-door solicitor, 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, in accordance with the procedure as set forth in sec. 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 secs. 423.203(1)(a)(b) and (c), (2) and (3), Wis. Stats.

(c) If the transient merchant or door-to-door solicitor 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.

889.10. Mobile Concession Street Vendors.

(a) Mobile Concession Street Vendors shall be allowed to sell from public streets, but shall not impede the free use of streets or sidewalks by vehicles or pedestrians. All traffic and parking regulations shall be observed. If an on-duty officer of an authorized law-enforcement agency determines that a safety problem exists related to the selling activities at a specific location(s) by a Mobile Concession Street Vendor, the officer shall have the right to order the vendor to cease selling at that location(s). Mobile Concession Street Vendors shall not remain in one location, either on a city street, street right-of-way, or in a public park, for a period of longer than six (6) hours.

(b) Licensed Mobile Concession Street Vendors shall be allowed to operate only between the hours of 9:00 a.m. and 10:00 p.m. No sales shall be permitted within 300 feet of an established, operating concession stand operated by a non-profit or charitable organization, such as Little League, school groups, or other similar organizations, or other existing permanent food uses.

889.11. Food Vendors in Parks. The Public Works Director and/or Parks and Recreation Director may waive the six-hour limit and authorize food vendors to sell food items intended for on-site consumption in City parks for a period of five consecutive days or less during a specified event. Said food vendors will be required to complete an application and pay a fee equal to the amount charged to transient merchants.

889.12. Exhibition of License. Licensed transient or permanent merchants soliciting in residential neighborhoods must wear their identification license card in a conspicuous place on

their clothing. Transient merchants selling from a fixed location must exhibit their certificate of license in a conspicuous place at the site where they are selling. Mobile Concession Street Vendors shall display their license in a window of their vehicle.

889.13. 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.

889.14. Revocation of License. Licenses issued under the provisions of this ordinance may be revoked by the Common Council after notice and hearing for any of the following causes:

(a) Fraud, misrepresentation, or incorrect statement contained in the application for license;

(b) Fraud, misrepresentation, or incorrect statement made in the course of carrying on his/her business as a solicitor, or transient merchant;

(c) Any violation of this ordinance;

(d) Conducting the business of solicitor, mobile concession street vendor or transient merchant, as the case may be, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public;

(e) Conviction of any crime or misdemeanor.

889.15. Notice of Hearings. Notice of the hearing for revocation of a license shall be given by the City Clerk in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his/her last known address at least 72 hours prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a court summons.

889.16. Penalty. Any person, firm, or corporation that shall violate any of the provisions of this ordinance shall forfeit not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense, plus the cost of prosecution. Each day's violation of the provisions of this ordinance shall constitute a separate offense.

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