

Chapter 356

TRANSIENT MERCHANTS

[HISTORY: Adopted by the Village Board of the Village of Spring Green as § 15.11 of the Village Code. Amendments noted where applicable.]

§ 356-1. Registration required.

It shall be unlawful for any transient merchant to engage in sales within the Village of Spring Green without being registered for that purpose as provided herein.

§ 356-2. Definitions.

As used in this chapter, the following terms shall have the meaning indicated:

CHARITABLE ORGANIZATION — Includes any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association or corporation or one purporting to be such.

CLERK-TREASURER — The Village Clerk-Treasurer.

MERCHANDISE — 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.

PERMANENT MERCHANT — Any person who, for at least one year prior to the consideration of the application of this chapter to said merchant:

- A. Has continuously operated an established place of business in the local trade area among the communities bordering the place of sale; or
- B. Has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his/her residence.

SALE OF MERCHANDISE — Includes a sale in which the personal service 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.

TRANSIENT MERCHANT — Any individual who engages in the retail sale of merchandise at any place in this Village temporarily and who does not intend to become and does not become a permanent merchant of the Village. This includes offering unsolicited free services while representing a business, organization, or corporation.

§ 356-3. 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 merchandise at wholesale to dealers in such merchandise.
- C. Any person selling agricultural products which the person has grown.
- D. 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 Village and who delivers such merchandise in his regular course of business.
- E. 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.
- 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 within 1 year.
- G. 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 Clerk-Treasurer proof that such charitable organization is registered under § 440.42, Wis. Stats. Any charitable organization engaging in the sale of merchandise and not registered under § 440.42, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this chapter.
- 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 person who claims to be a permanent merchant but against whom complaint has been made to the Clerk-Treasurer that such person is a transient merchant, provided that there is submitted to the Clerk-Treasurer 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 area for at least one year prior to the date the complaint was made.
- J. Any individual licensed by an examining board as defined in § 15.01(7), Wis. Stats.
- K. Transient merchants while doing business at special events authorized by the Village Board.

§ 356-4. Registration procedure.

- A. Applicants for registration must complete and return to the Clerk-Treasurer a registration form furnished by the Clerk-Treasurer which shall require the following information: (An application must be filled out from each person who will be present while engaged in sales.)
 - (1) Full Name, date of birth, permanent address and telephone number, and temporary address, if any;

- (2) Physical description of applicant: Age, height, weight, and 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 the 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 method of delivery of merchandise if applicable;
- (7) Make, model and license number of any vehicle to be used by the applicant in the conduct of his/her business;
- (8) Most recent cities, villages, and towns, not to exceed three, where the applicant conducted his/her business;
- (9) Place where the applicant can be contacted for at least seven days after leaving this Village; and
- (10) Statement as to whether applicant has been convicted of any crime or ordinance violation related to the applicant's transient merchant business within the last five years and the nature of the offense and the place of conviction.
- (11) The names of at least two references, who are residents of the State of Wisconsin, who will certify as to the applicant's good character and business responsibility, or, in lieu of the names of references, such other available evidence as to good character and business responsibility.

B. Applicants shall present to the Clerk-Treasurer 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 to state that the applicant is apparently free from any contagious or infectious diseases, dated not more than 90 days prior to the date the application for license is made.

C. At the time the registration is returned, a fee as set by the Village Board shall be paid to the Clerk-Treasurer to cover the cost of processing said registration.¹

D. The applicant shall sign a statement appointing the Clerk-Treasurer his/her agent to accept service of process in any civil action brought against the applicant arising out of any sale or

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Amended 2/24/16: Updates to following Sections: 356-3 Exemptions, 356-4 Registration Procedure and 356-7 Prohibited practices, disclosure requirements.

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.

- E. Upon payment of said fee and the signing of said statement, the Clerk-Treasurer shall register the applicant as a transient merchant 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 § 356-5B below.

§ 356-5. Investigation.

- A. Upon receipt of each application, the Clerk-Treasurer may refer it immediately to the Spring Green Police Department which may make and complete an investigation of the statements made in such registration.
- B. The Clerk-Treasurer 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 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 provisions of § 356-4B above, or the Police Chief finds the applicant's character or business responsibility to be unsatisfactory.

§ 356-6. Appeal.

Any person refused or denied registration may appeal the denial through the appeal procedure provided under the provisions of §§ 68.07 through 68.16, Wis. Stats.

§ 356-7. Prohibited practices; disclosure requirements.

- A. Prohibited practices.
 - (1) A transient merchant shall be prohibited from calling at any dwelling or other place between the hours of 7:00 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 transient merchant 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 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.
 - (3) No transient merchant 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 transient merchant 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 transient merchant shall allow rubbish or litter to accumulate in or around the area in which he/she is conducting business.

B. Disclosure requirements.

- (1) After the initial greeting and before any other statement is made to a prospective customer, a transient merchant 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.
- (2) If any sale of merchandise is made by a transient merchant, 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 provisions 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 transient merchant 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.

§ 356-8. Record of violations.

The Spring Green Police Department shall report to the Clerk-Treasurer all convictions for violation of this chapter, and the Clerk-Treasurer shall note any such violation on the record of the registrant convicted.

§ 356-9. Revocation of registration.

- A. Registration may be revoked by the Village Board, after notice and hearing, if the registrant made any material omission or materially inaccurate statements 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 chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in selling.
- B. Written notice of the hearing shall be served personally or pursuant to § 356-4D 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.

§ 356-10. Violations and penalties.

Any person adjudged in violation of any provision of this chapter shall forfeit not less than \$10 nor more than \$1,000 for each violation per day plus costs of prosecution. Each violation shall constitute a separate offense.