

## **12.03 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS (Ord. #1308 – 12-03-09)**

### (1) PURPOSE.

This chapter is intended to protect against criminal activity, including fraud and burglary, to minimize the unwelcome disturbance of citizens and the disruption of privacy and to otherwise preserve the public health, safety and welfare by regulating, controlling and licensing door-to-door solicitors and peddlers as well as other transient merchant trade.

The regulations contained in this chapter are not intended to regulate speech by any person, but merely regulate the activities of those individuals selling or offering for sale merchandise or requesting contributions for a charitable purpose.

It shall be unlawful for any Peddler, Solicitor or Transient Merchant to engage in any sales or solicitation within the City of Muskego without being issued a license for that purpose as provided herein except those individuals that are exempt as defined in Section (3).

### (2) DEFINITIONS. (As used in this chapter.)

- (a) "Peddler" means a person who goes from place to place within the City offering for sale property which he/she carries.
- (b) "Solicit" and "Solicitation" means and includes any one or more of the following:
  - 1. Selling or offering for sale, or taking or attempting to take orders for the sale of goods or services of any kind;
  - 2. Selling or offering for sale, or taking or attempting to take orders for books, magazines, periodicals, newspapers and every other type or kind of publication;
  - 3. Requesting contributions, directly or indirectly, on the plea or representation that such contributions will be used for a charitable or religious purpose.
- (c) "Transient Merchant" means a person who temporarily engages in the retail sale of merchandise at a fixed location in the City.
- (d) "Charitable Organization" means any benevolent, philanthropic, patriotic, social service, welfare, educational, civic, cultural, religious (when soliciting), or fraternal person, partnership, association or corporation.
- (e) "Contribution" means and includes alms, food, clothing, money, property, financial assistance or other thing of value. A contribution, as defined herein, shall also include a sale or offer to sell any book, card, magazine, membership, merchandise, subscription, ticket or other thing in connection with which an appeal is made of any charitable purpose.
- (f) "Sales Event" is an event during which numerous independent persons, businesses or firms are gathered together within a specific area to offer various types of goods for sale to the general public. A sales event includes one-time events as well as events held on a periodic basis. "Sales Events" shall include events organized by a local sponsor and held on a regular basis if the event

involves any independent seller or dealer who does not attend and sell at every event. Events which typically will be defined as "Sales Events" include, but are not limited to, flea markets, craft fairs and any other events in which various independent exhibitors offer a variety of goods for sale.

### (3) EXEMPTIONS.

No license shall be required by the City of Muskego as provided by this Ordinance of the following persons or categories of persons. All other provisions of this chapter must be complied with.

- (a) Persons selling personal property at wholesale to dealers in such articles.
- (b) Children under 18 years of age who are residents of the City.
- (c) Persons delivering to regular customers on established routes.
- (d) Waukesha County Residents, farmers or truck gardeners offering to sell products of the farm or garden occupied and cultivated by them.
- (e) Sales required by Statute or order of the Court.
- (f) Bona fide auction sales conducted pursuant to law.
- (g) Any church, fraternal or civic organization whose principal location is within the city limits of Muskego, including the Muskego Community Festival.
- (h) Any person exempt by Section 440.51 of the Wisconsin Statutes (Statewide license for ex-soldiers).
- (i) Religious organizations. The exemption does not pertain to a religious organization that is soliciting.
- (j) Political organizations.

### (4) APPLICATION FOR A LICENSE.

A sworn, written application for a license under this section shall be filed with the City Clerk-Treasurer on a form provided by the Clerk's office. The form shall require the necessary information from the applicant as the Police Department shall need for the effective enforcement of this section and safeguarding of the residents of the City from fraud, misconduct or abuse. Applicants shall present a valid Driver's License at the time the application is submitted, or some other proof of identity as may be reasonably required.

- (a) Peddlers and Solicitors. The applicant who is the prospective licensee must obtain a license in his/her own name. The prospective licensee must further obtain a permit for each individual person peddling or soliciting.. The prospective licensee and each person peddling or soliciting under the licensee is required to remit fees as set forth in Section 5.

- (b) Transient Merchants. The applicant who is the prospective licensee must obtain a license in his/her own name. The prospective licensee is required to remit fees as set forth in Section 5. Applicants for a Transient Merchant license must contact the Community Development Department to determine if review and approval is needed by the Plan Commission. The Clerk-Treasurer will not issue the license until such approval is obtained.

Any sales to be conducted on property governed by the Parks and Recreation Department must comply with Chapter 26 of the Municipal Code of the City of Muskego.

(5) FEES.

- (a) Every applicant for a license under this section shall pay a daily fee or the annual fee as set by a resolution approved by the Common Council.
- (b) The annual fee shall be assessed on a calendar year basis. On or after July 1, the amount of the annual fee for a license shall be one-half of the amount for the remainder of the year except for an application for a Transient Merchant. The annual fee established for a Transient Merchant license shall be the same no matter when the application is submitted or how long the licensee operates.
- (c) An investigation fee for each prospective Peddler, Solicitor or Transient Merchant shall be paid at the time the application is submitted. The fee charged shall be set by a resolution approved by the Common Council.

(6) CHARITABLE ORGANIZATIONS

Any organization defined as a "Charitable Organization" shall file a sworn, written application with the City Clerk-Treasurer on a form provided by the Clerk's Office. The form shall require the necessary information from the applicant as the Police Department shall need for the effective enforcement of this section and safeguarding of the residents of the City from fraud, misconduct or abuse.

- (a) Charitable organizations are exempt from payment of the license fee except for the investigation - fee for each representative of the organization. The fee charged shall be based on the actual costs associated with the investigation and is nonrefundable.
- (b) Proof of tax-exempt status must be furnished to the City Clerk-Treasurer.

(7) INVESTIGATION AND ISSUANCE.

- (a) Upon receipt of each application, it shall be referred to the Chief of Police who shall immediately institute such investigation of the applicant's business and moral character as he/she deems necessary for the protection of the public good and shall endorse the application in the manner prescribed in this section within 72 hours after it has been filed by the applicant with the Clerk.
- (b) The Police Chief shall not endorse a license applicant for any of the following reasons, but shall not be limited to them:

1. The application contains any material omission or materially inaccurate statement.
  2. 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 solicitation.
  3. The applicant failed to comply with any applicable provision of Sec. (4) above.
- (c) If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and his reasons for the same, and return the said application to the City Clerk-Treasurer, who shall notify the applicant that his application is disapproved and that no license will be issued.
- (d) If as a result of such investigation, the applicant's character and business responsibility are found to be satisfactory, the Chief of Police shall endorse on the application his/her approval and return the application to the City Clerk-Treasurer, who shall issue the license. Such license shall contain the signature of the issuing officer and shall show the name of said licensee, the type of license issued, the license fee paid, the date of issuance and expiration. Each Peddler, Solicitor or Transient Merchant must secure a personal license. No license shall be used at any time by any person other than the one to whom it is issued. The Clerk-Treasurer shall keep a record of all licenses issued.

(8) LOUD NOISES AND SPEAKING DEVICES.

No licensee, nor any person in his behalf, shall shout, cry out, blow a horn, ring a bell or use any sound amplifying device 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.

(9) USE OF STREETS.

No licensee shall have any exclusive right to any location in the public streets, nor shall he/she be permitted a stationary location thereon, or be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such streets. The judgment of a police officer, exercised in good faith, shall be conclusive as to whether the area is congested and the public impeded or inconvenienced.

(10) EXHIBITION OF LICENSE.

Licensees are required to exhibit their certificate of license at the request of any citizen. Any person licensed herein, upon the demand of any police officer, shall exhibit his/her license and certify that he/she is the person named therein.

(11) PROHIBITED PRACTICES.

A licensed or exempt Peddler or Solicitor shall be prohibited from: calling at any dwelling or other places 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.

(12) DUTY OF CITY TO ENFORCE.

The City police shall require any person seen peddling or soliciting, and who is not known by such officer to be duly licensed, to produce his/her license and shall enforce the provisions of this section against any person found to be violating the same.

(13) RECORDS.

The police department shall report to the City Clerk-Treasurer all convictions for violation of this section, and the City Clerk-Treasurer shall maintain a record for each license issued and record the reports of violation therein.

(14) REVOCATION OF LICENSE.

(a) Licenses issued under this section may be revoked by the Common Council after notice and hearing, for any of the following causes:

1. Fraud, misrepresentation, or incorrect statement contained in the application for license.
2. Fraud, misrepresentation or incorrect statement made in the course of carrying on business as a Solicitor, Peddler, or Transient merchant, .
3. Any violation of this section.
4. Conviction of any crime or misdemeanor.
5. Conducting business as a Peddler, Solicitor, 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.

(b) Notice of the hearing for revocation of a license shall be given by the City Clerk-Treasurer, in writing, setting forth specifically the grounds of complaint and time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee's last known address at least 5 days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least 3 days prior to the date set for hearing.

(15) APPEAL.

Any person aggrieved by the action of the police or the City Clerk-Treasurer in the denial of a permit or license as provided in sub. (7 ), may appeal to the Common Council. Such appeal shall be taken by filing with the Common Council, within 14 days after notice of the action complained of, a written statement setting forth fully the grounds for the appeal. The Common Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in sub. (14) for notice of hearing on revocation.

(16) REAPPLICATION.

No licensee whose license has been revoked shall make further application until at least 6 months have elapsed since the last previous revocation.

(17) EXPIRATION OF LICENSE.

All annual licenses issued under this section shall expire at midnight on December 31. Other than annual licenses shall expire at midnight on the date specified on the license.

(18) SALES EVENTS.

The individual exhibitors involved in a sales event, as defined in Subsection (2)(f), shall not be required to obtain individual licenses as provided in this section, provided, however, that the following conditions are complied with:

- (a) The person organizing the event, or an agent if the event is being organized by a corporation, shall obtain a sales event license from the City Clerk-Treasurer of the City of Muskego.
- (b) In order to obtain a sales event license, the applicant must file a sworn, written application with the City Clerk-Treasurer on a form to be furnished by the City Clerk-Treasurer. The form shall require the necessary information as the Police Department shall need for effective enforcement of this section and safeguarding of the residents of the City from fraud, misconduct or abuse.
- (c) The applicant must obtain a separate license for each day that the sales event takes place.
- (d) Upon receipt of the application, the application shall be referred to the Chief of Police for investigation pursuant to Subsection (7).
- (e) The applicant or a sales event licensee shall pay a daily fee for each day that the sales event takes place as set by a resolution approved by the Common Council.

(19) PENALTY

Any person who shall violate any provision of this Chapter shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.