

**CITY OF TOMAH  
DIRECT SELLER'S & TRANSIENT MERCHANDISE REGISTRATION**

WITH THE REGISTRATION FORM, APPLICANTS SHALL PRESENT A DRIVER'S LICENSE OR SOME OTHER  
PROOF OF IDENTITY AS MAY BE REASONABLY REQUIRED.

Driver's License No.: \_\_\_\_\_ State Issued: \_\_\_\_\_ Exp.: \_\_\_\_\_

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: \_\_\_\_\_

Address: \_\_\_\_\_  
  Street  City  State  Zip Code

Date of Birth: \_\_\_\_\_ Social Security No.: \_\_\_\_\_

Telephone #(s): \_\_\_\_\_ Email: \_\_\_\_\_

Make, model, license number and State of any vehicle(s) to be used by applicant in the conduct of his/her business: \_\_\_\_\_

Name of person, firm, association or corporation represented:

    Name/Business: \_\_\_\_\_

    Address: \_\_\_\_\_

    Telephone #: \_\_\_\_\_

Temporary address or location(s) and telephone number from which business will be conducted, if any: \_\_\_\_\_

Describe the business to be conducted with a brief description of the goods offered for sale and any services offered: \_\_\_\_\_

Names of last three cities, villages, or towns where applicant conducted similar business (if applicable):

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

Proposed method of delivery of goods (if applicable): \_\_\_\_\_

Have you been convicted of any crime or ordinance violation related to transient merchant business, direct sales or farmers market within the last 5 years? YES:  NO:

\*If answer is YES, list the nature of the offense and the place of conviction: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**READ BEFORE SIGNING:**

Pursuant to City Ordinance, it shall be unlawful for any individual to engage in direct sales or any transient merchant to engage in the retail sale of merchandise within the City of Tomah without being registered for that purpose.

Applications must be furnished to the Clerk at least 15 days prior to the issuance of the registration. All registrations shall be valid for one year.

IF SCALES ARE USED: The City requires verification that the applicant's scales were certified within the last year from any registered and independent weights and measures testing firm or company when applicant's business requires use of weighing and measuring devices.

Under penalty provided by law, the applicant states that each of the above questions have been truthfully answered to the best of the knowledge of the signer.

Signer agrees to operate within the City of Tomah according to ordinances of said City.

Failure to abide by these rules and regulations will be grounds for revocation.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date of Application

.....  
*OFFICE USE ONLY*

Receipt #: \_\_\_\_\_ Amount Paid \$: \_\_\_\_\_ Date: \_\_\_\_\_

Application processed by: \_\_\_\_\_

Approved by Police Chief: \_\_\_\_\_ Date: \_\_\_\_\_

Issue Date: \_\_\_\_\_ Expire Date: \_\_\_\_\_

Permit Distributed by: \_\_\_\_\_ Date: \_\_\_\_\_

## Chapter 32 - PEDDLERS, SOLICITORS AND DIRECT SELLERS

## ARTICLE I. - IN GENERAL

## Sec. 32-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Charitable organization* means and includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation or one purporting to be such.

*Clerk* means the city clerk.

*Direct seller* means any individual who for himself or for a partnership, association or corporation sells merchandise or takes sales orders for the later delivery of merchandise 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 merchandise includes donations required by the direct seller for the retention of merchandise by a donor or prospective customer.

*Merchandise* means and includes 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 merchandise by a donor or prospective customer.

*Permanent merchant* means any person who, for at least six months prior to the consideration of the application of this article to said merchant, has continuously operated an established place of business in the local trade area among the communities bordering the place of sale, or has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his residence.

*Sale of merchandise* means a sale in which the personal services rendered upon or in connection with the merchandise constitutes the greater part of value for the price received, but not 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 except as provided herein.

*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.

(Code 1993, § 12.07(2))

Sec. 32-2. - Penalties.

Any person adjudged in violation of any provision of this article shall forfeit not less than \$10.00 nor more than \$1,000.00 for each violation per day plus costs of the prosecution. Each violation shall constitute a separate offense.

(Code 1993, § 12.07(10))

Secs. 32-3—32-22. - Reserved.

ARTICLE II. - DIRECT SELLERS

DIVISION 1. - GENERALLY

Secs. 32-23—32-47. - Reserved.

DIVISION 2. - REGISTRATION

Sec. 32-48. - Registration required.

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

(Code 1993, § 12.07(1))

Sec. 32-49. - Exemptions.

The following shall be exempt from all provisions of this section:

- (1) Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- (2) Any person selling merchandise at wholesale to dealers in such merchandise.
- (3) Any person selling agricultural products that the person has grown and where the sales take placement in the designated farmers' market approved by the city.
- (4) Any permanent merchant or his employee who takes orders away from the established place of business for merchandise regularly offered for sale by such merchant within this county and who delivers such merchandise in their regular course of business.
- (5) 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 such person.

- (6) Any person who has had or one who represents a company that has had a prior business transaction, such as a prior sale or credit arrangement with the prospective customer.
- (7) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise.
- (8) 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.
- (9) 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 Wis. Stats. § 440.41. Any charitable organization not registered under Wis. Stats. § 440.41 or which is exempt from that statute's registration requirements shall be required to register under this article.
- (10) 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 at least one year prior to the date complaint was made, such person had leased for at least one year or purchased the premises from which he is conducting business in this city.
- (11) Any individual licensed by an examining board as defined in Wis. Stats. § 15.01(7).
- (12) This article does not apply to transient merchants while doing business at special events which are under the supervision and control of a local organization or business during special events specifically authorized by the common council, provided that:
  - a. Transient merchants applying under this section must be sponsored by a stated local organization or business.
  - b. The sponsoring organization or business shall be responsible for all activities of the transient merchant.
- (13) Any person selling Christmas trees or wreaths or other fresh greenery associated with the Christmas season.

(Code 1993, § 12.07(3))

Sec. 32-50. - Registration form.

Applicants for registration shall complete and return to the clerk a registration form furnished by the clerk at least 15 days prior to issuance of the registration that shall contain the following information:

- (1) Applicant's complete name, permanent address and telephone number, and temporary address, if any;

- (2) Applicant's age, height, weight, color or hair and eyes;
- (3) Name, address and telephone number of the person, firm, association or corporation that the applicant represents or is employed by, or whose merchandise is being sold;
- (4) Temporary address and telephone from where 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 the applicant in the conduct of his business;
- (8) Most recent cities, villages, or towns, not to exceed three, where the applicant conducted his business;
- (9) Place where the 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 article violation related to applicant's transient merchant business within the last five years, and the nature of the offense and the place of conviction.

(Code 1993, § 12.07(4)(a))

#### Sec. 32-51. - Supporting documents.

With the registration form, 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) Where applicant's business requires the use of weighing and measuring devices, verification from any registered and independent weights and measures testing firm or company that the applicant's scales were certified within the last year from the date of application. The city reserves the right to contact the local department of agriculture, trade and consumer protection weights and measures inspection in order for the applicant's weighing and measuring devices to be reviewed.

(Code 1993, § 12.07(4)(b))

#### Sec. 32-52. - Designation of registered agent.

The applicant shall sign a statement appointing the clerk as his agent to accept service of process in any civil action brought against him arising out of any sale or service performed by him in connection with his direct sales activities, if the applicant cannot after reasonable effort be served personally.

(Code 1993, § 12.07(4)(d))

**Sec. 32-53. - Fees.**

At the time the registration is returned, a fee in the amount determined by the city council shall be paid to the clerk to cover the cost of police record checks and processing of the registration. In the event the application is denied, one-half of the fee shall be refunded. The remaining one-half shall be retained by the city to cover the cost of processing.

(Code 1993, § 12.07(4)(c))

**Sec. 32-54. - Background check.**

Upon receipt of each application and fee, the clerk may refer it immediately to the chief of police who shall make and complete a records check of the statements made in such registration.

(Code 1993, § 12.07(5)(a))

**Sec. 32-55. - Grounds for denial.**

The clerk shall refuse to register the applicant if it is determined pursuant to the records check above that the application contains any material omission or materially inaccurate statements; complaints of a material nature have been received against the applicant by authorities in the last cities, villages or towns, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or article 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 provided herein.

(Code 1993, § 12.07(5)(b))

**Sec. 32-56. - Registration; term.**

Upon compliance with all of the foregoing conditions, including payment of the fee and designation of the registered agent, the clerk shall register the applicant as a direct seller and date the entry. The registration shall be valid for a period of one year from the date of entry subject to subsequent refusal as provided in this section.

(Code 1993, § 12.07(4)(d))

**Sec. 32-57. - Appeal of denial of registration.**

Any person denied registration may appeal the denial through the appeal procedure provided by article or resolution of the council or, if none has been adopted, under the provisions of Wis. Stats. §§ 68.08 through 68.16.

(Code 1993, § 12.07(6))

Sec. 32-58. - Revocation.

Registration may be revoked by the council 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 section; or was convicted of any crime, article or statutory violation which is directly related to the registrant's fitness to engage in direct selling. 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 hearing and a statement of the acts upon which the hearing will be based.

(Code 1993, § 12.07(9))

Secs. 32-59—32-89. - Reserved.

DIVISION 3. - REGULATION

Sec. 32-90. - Duty of chief of police to report violations.

The chief of police shall report to the clerk all convictions for violation of this article and the clerk shall note any such violation on the record of the registrant convicted.

(Code 1993, § 12.07(8))

Sec. 32-91. - Required and prohibited acts.

- (a) *Hours; posted property; trespass.* A direct seller shall be prohibited from calling at any dwelling or other place between 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.
- (b) *Fraud and misrepresentation.* A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any merchandise offered for sale, the purpose of his visit, his identity or the identity of the organization he represents.
- (c) *Disclosure by charitable organization.* A charitable organization direct seller shall specifically disclose what portion of the sale price of merchandise being offered will 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 merchandise.

- (d) *Obstructing public ways.* 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.
- (e) *Excessive noise.* 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 100-foot radius of the source.
- (f) *Littering.* No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.
- (g) *Display of registration certificate.* If the business is being conducted from a vehicle or stationary structure, the certificate of registration or facsimile thereof shall be displayed prominently thereon. The permit issued by the clerk's office shall be displayed.

(Code 1993, § 12.07(7)(a), (b)4)

#### Sec. 32-92. - Disclosure requirements.

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 merchandise or services he offers to sell.

(Code 1993, § 12.07(7)(b)1)

#### Sec. 32-93. - Buyer's right to cancel.

If any sale of merchandise is made by a direct seller or any sales order for the later delivery of merchandise is taken by the seller, the buyer shall have the right to cancel the transaction if it involved the extension of credit or is a cash transaction of more than \$25.00 in accordance with the procedure in Wis. Stats. § 423.203. The seller shall give the buyer two copies of a typed or printed notice of that fact, such notice to conform to the requirements of Wis. Stats. § 423.203(1)(a), (b) and (c), (2) and (3).

(Code 1993, § 12.07(7)(b)2)

#### Sec. 32-94. - Written purchase and sale agreement.

If the direct seller takes a sales order for the later delivery of merchandise, at the time the order is taken he shall 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.

(Code 1993, § 12.07(7)(b)3)