

**AN ORDINANCE CREATING SECTION 2.13 OF
THE GENERAL ORDINANCES OF THE VILLAGE OF
OOSTBURG, SHEBOYGAN COUNTY, WISCONSIN
RELATING TO TRANSIENT MERCHANTS**

WHEREAS, regulation in the Village of Oostburg of transient merchants is a matter of importance to the Village; and

WHEREAS, the proper regulation of transient merchants helps to ensure the safety and well being of Village residents;

NOW, THEREFORE, the Village Board of the Village of Oostburg does hereby ordain as follows:

Section 2.13 of the Village of Oostburg General Ordinances Relating to Transient Merchants is hereby created to read as follows:

- (1) Registration required. It shall be unlawful for any transient merchant to engage in sales within the village without being registered for that purpose as provided herein.
- (2) Definitions: In this chapter:
 - (a) "Charitable organization" means and includes any benevolent, philanthropic, patriotic, or eleemosynary person, association or cooperation, or one purporting to be such.
 - (b) "Clerk" shall mean the village clerk.
 - (c) "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 goods by a donor or prospective customer.
 - (d) "Permanent merchant" means any person who, for at least six months 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.
 - (e) "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 the 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 or 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.

- (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 the country and who delivers such merchandise in their 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;
 - (g) Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise;
 - (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 clerk proof that such charitable organization is registered under Section 440.41, Wisconsin Statutes. Any charitable organization engaging in the sale of merchandise and not registered under Section 440.41, Wisconsin Statutes, 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 clerk that such person is a transient merchant; provided, that there is submitted to the clerk 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 six months prior to the date the complaint was made;
 - (k) Any individual licensed by an examining board as defined in Section 15.01(7), Wisconsin Statutes;
 - (l) This chapter does not apply to transient merchants while doing business at special events authorized by the village board.
- (4) Registration.

(a) Applicants for registration must complete and return to the clerk a registration 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 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 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 village;
10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicants transient merchant business within the last five years, and the nature of the offense and the place of conviction.

(b) Applicants shall present to the clerk for examination:

1. A driver's license or some 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 license is made.

(c) At the time the registration is returned, a fee of fifty dollars (\$50.00) shall be

paid to the clerk to cover the cost of processing said registration. Upon payment of said fee, the clerk 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 the entry, subject to subsequent refusal as provided in Section 5(b).

(5) Investigation.

(a) Upon receipt of each application, the clerk may refer it immediately to the policing authority for the village who may make and complete an investigation of the statements made in such registration.

(b) The 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 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 Section 4(b).

(6) Appeal. Any person refused or denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the village board, or if none has been adopted, under the provisions of Section 68.07 through 68.16, Wisconsin Statutes.

(7) Regulation of transient merchants.

(a) Prohibited Practices.

1. A transient merchant shall be prohibited from: calling at any dwelling or other place between the hours of nine p.m. and nine a.m. except by appointment; calling at any dwelling or other place where a sign is displayed bearing words "No Peddlers," "No Solicitors" or words or 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 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.

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 (100) 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 or 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 twenty-five dollars (\$25.00), in accordance with the procedure as set forth in Section 423.203, Wisconsin Statutes; 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 Sections 423.203(1)(a), (b) and (c), (2) and (3), Wisconsin Statutes.

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.

(8) Records. The village policing authority shall report to the clerk all convictions for violations of this chapter and the clerk shall note any such violation on the record of the registrant convicted.

(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 on the registrant at least seventy-two (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.

(10) Penalty. Any person adjudged in violation of any provision of the Transient Merchants Ordinance shall forfeit not less than Ten Dollars (\$10.00) nor more than One Thousand Dollars (\$1,000.00) for each violation per day plus costs of prosecution. Each violation shall constitute a separate offense.

This Ordinance shall take effect upon enactment and publication.

Enacted this 14th day of September, 2009.

VILLAGE OF OOSTBURG

By: _____
Jack E. Hoffmann, President

By: _____
Jill E. Ludens, Clerk/Treasurer

CERTIFICATE OF ENACTMENT

This is to certify that the foregoing Ordinance was duly enacted by the Village Board of the Village of Oostburg on the date indicated above.

Dated: September 14, 2009.

Jill E. Ludens, Clerk/Treasurer
Village of Oostburg