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20.01 TRANSIENT MERCHANT REGULATIONS

- (1) Registration Required. It shall be unlawful for any transient merchant to engage in direct sales within the City of Wisconsin Rapids without being registered for that purpose as provided herein. (MC#568)
- (2) Definitions. In this ordinance. (MC#966)
  - (a) Transient Merchant means any individual who, for himself or for a partnership, association, or corporation 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 the 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. Transient merchants shall include, but not be limited to peddlers, solicitors, and telephone solicitors. For purposes of this chapter, the acceptance of a "donation" in exchange for goods, or an order for goods, shall be deemed an act requiring compliance with all of the regulatory provisions of this chapter, including registration and posting of a bond.
    - (1) Transient Merchant Business means any individual, partnership, corporation or business entity of any type whatsoever, which employs transient merchant employee/representatives as defined below either on a full-time, part-time or commission basis and is not a permanent merchant as defined in paragraph (b).
    - (2) Transient Merchant Employee/Representative means any individual who, for him/herself, or for another (including but not limited to partnership, association or corporation) sells goods, or take sales orders for the later delivery of goods, at any location other than the permanent business place or residence of the individual, partnership, association or corporation.
  - (b) Permanent Merchant means a transient merchant who, for at least one year prior to the consideration of the application of this ordinance to said merchant has continuously operated an established place of business in the local trade area among the communities including and bordering the place of sale or has continuously resided in the local trade area among the communities including and bordering the place of sale and now does business from his/her residence.
  - (c) Merchandise shall include personal property of any kind, and merchandise 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. "Merchandise" shall also include the sale of a service of any kind.

- (d) Charitable Organization shall include any benevolent, philanthropic, patriotic, or eleemosynary person, partnership, association, or corporation, or one purporting to be such.
  - (e) Clerk shall mean the city clerk.
- (3) Exemptions. The following shall be exempt from all provisions of this ordinance:
- (a) Any person delivering newspapers, fuel, dairy products, or bakery merchandise 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 such person has grown.
  - (d) Any permanent merchant or employee thereof 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.
  - (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 status 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 not registered under Section 440.41, Statutes, or which is exempt from the statute's registration requirements shall be required to register under this ordinance.
  - (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 is conducting business, or proof that such person has conducted such business in the city for at least one year prior to the date complaint was made.
  - (k) Any individual licensed by an examining board as defined in Section 15.01(7), Wisconsin Statutes. (MC#568)
  - (l) This ordinance does not apply to transient merchants while doing business at special events authorized by the common council. (MC#568)
- (4) Registration. (MC#966)
- (a) Transient merchant businesses must complete all registration requirements with the city clerk no less than 30 days prior to commencing any and all selling activities in the City of Wisconsin Rapids and transient merchant employee/representatives must complete all registration requirements with the city clerk no less than 72 hours prior to commencing any and all selling activities in the City of Wisconsin Rapids. Registration shall include the following information:
    - (1) Transient Merchant Business
      - (a) Business name, permanent address, telephone number, Wisconsin seller's permit number, name of business contact person, contact person's date of birth, driver's license or identification number and issuing state;
      - (b) Nature of business to be conducted and a brief description of the goods offered, and any services offered;
      - (c) Proposed method of delivery of goods, if applicable;
      - (d) Total number of employees selling during business operations covered by this license;
      - (e) Dollar value of most expensive merchandise or service offered;
      - (f) Dates in which selling activity shall occur;
      - (g) Names of last three cities, villages, towns where business has conducted similar business just prior to making this registration;
      - (h) Place where business on-site contact person can be personally contacted for at least sixty (60) days after leaving this city.

- (i) Location, address and telephone number from which business will be conducted, if any, and written permission from the owner of the property for the applicant to conduct business on the property, which statement shall be submitted with the registration form;
  - (j) Statement as to whether applicant has been charged or convicted of any crime or ordinance violation related to applicant's transient merchants business within the last five years; the nature of the offense and the place of conviction;
- (2) Transient Merchant Employee/Representative
- (a) Name, permanent address, and telephone number, and temporary address, if any;
  - (b) Date of birth, driver's license or identification number, issuing state, height, weight, and color of hair and eyes;
  - (c) 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;
  - (d) Location, address and telephone number from which business will be conducted, if any, and written permission from the owner of the property for the applicant to conduct business on the property, which statement shall be submitted with the registration form, if not already provided by the transient merchant business with its application;
  - (e) Nature of business and a brief description of the merchandise and services offered;
  - (f) Proposed method of delivery of merchandise, if applicable;
  - (g) Make, model, and license number of any vehicle to be used by applicant in the conduct of his/her business;
  - (h) Place where applicant can be personally contacted for at least 60 days after leaving this city;
  - (i) Statement as to whether applicant has been charged or convicted of any crime or ordinance violation related to applicant's transient merchants business within the last five years; the nature of the offense and the place of conviction;
  - (j) Dates in which selling activity will occur.
- (b) Applicants shall present to the clerk for examination:
- (1) For an employee/representative, a driver's license or some other proof of identity as may be reasonable required by the clerk;
  - (2) For the business, a state certificate of examination and approval from the seller of weights and measures where applicants business requires use of weighing and measuring devices approved by state authorities
  - (3) For the business and/or an employee/representative, a State of Wisconsin or Wood County health officer's certificate where the applicant's business involves the handling of food, beverages or clothing and is required to be certified under state law; such certificate to state the applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application is made. The applicant's equipment shall be subject to inspections by the Wood County health department at the time of application and at periodic intervals thereafter.
- (c) At the time of registration or additional licensing within a current registration period, a non-refundable fee shall be paid to the clerk. Fees shall be charged according to the following schedule:

Business	Employee	Time Period
\$50	\$10	two consecutive days
\$100	\$10	four consecutive days
\$150	\$10	one week
\$175	\$15	one month
\$250	\$20	six months
\$500	\$40	one year

Sales may take place only within the time period permitted by a license. Licenses shall be subject to refusal as provided in Section 20.01(5) or revocation as provided in 20.01(7) and 20.01(10). Transient merchant businesses who are sole proprietors personally conducting sales shall be required to purchase only the transient merchant business license.

- (d) The applicant shall sign a statement appointing the clerk his/her agent to accept service in process in any civil action brought against the applicant arising out of any sale or service performed by the applicant cannot, after reasonable effort, be served personally.
  - (e) Upon payment of said fee and the signing of said statement, the clerk shall register the applicant as a transient merchant, date the entry, and issue a license. Said registration and license shall be subject to subsequent refusal as provided in 20.01(5) below.
- (5) Investigation.
- (a) 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) 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 last 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; the applicant failed directly to comply with any applicable provision of 20.01(4)(b) above. (MC#568)
- (6) Appeal. Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the common council or if none has been adopted, under the provisions of Sections 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 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.
    - (2) A transient merchant 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/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 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 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 of merchandise is made by a transient merchant, or any sales order 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 \$25.00, in accordance with the procedure as set forth in Section 423.203, of the 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 Section 423.203(1)(a), (b), and (c); (2); and (3) of the 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) Bond

(a) A transient merchant business shall post with the clerk at the same time the registration form is filed with the clerk a cash bond in lawful money of the United States, in an amount based on the most expensive item of merchandise or service sold. The bond shall be \$1,000 for goods priced less than \$1; \$2,500 for goods priced from \$1 to \$49.99; \$5,000 for goods priced from \$50 to \$99.99; \$7,500 for goods priced from \$100 to \$249.99; and \$10,000 for goods priced \$250 or more. The transient merchant shall name all persons upon whose behalf the bond shall be posted. Buyers or donors who wish to cancel their transactions or claim a refund as permitted in 20.01(7)(b)(2) may do so by presenting within the time limits in 20.01(7)(b)(2) to the clerk the merchandise purchased or the credit papers, and the clerk shall refund to the donor or buyer the amount paid to the seller. The clerk shall deduct from the bond any amount so refunded plus \$25 for each refund made as a handling charge. The clerk shall store the merchandise and papers upon which the refund was grounded, notify by first class mail the seller at the address provided in the registration form. Twenty days after such notice is mailed the clerk may sell or destroy such merchandise and papers, crediting any money received therefore to the seller's bond account. Once the bond has been depleted by 20 percent, transient merchant shall upon written notice thereof by first class mail, within 10 days after mailing of such notice, replenish the bond or forfeit the registration. No transient merchant shall conduct activities within the city once such notice has been mailed until such time as the fund is replenished unless the registration is revoked, in which case no further sales shall take place. Balances of cash bonds are fully refundable after 60 days from the license expiration date if the city clerk has received no notice of complaints or upon written notification by all complainants that complaints have been satisfactorily settled, whichever is later.

(b) As an alternative to the cash bond required in Section 20.01(8)(a), the transient merchant business may present a surety bond from a reputable bonding firm for the period of sale and a period extending no less than six months after the end of the period of sale. The amount of the bond shall be determined as in section 20.01(8)(a) above. The bond shall name all persons for whom the bond is posted. Refunds to customers for any returns of merchandise to the city clerk shall be paid by the bonding firm or transient merchant to such customers. Claims for refunds shall be within the time limits of Section 20.01(7)(b). The clerk shall store the merchandise and papers upon which the refund was grounded, and notify by first class mail the seller and bonding firm at the address provided in the registration form and on the bond. No transient merchant shall conduct activities in the city if evidence of a refund is not received by the clerk within 20 days of the mailing of such notice or returned merchandise. The clerk shall retain such returned merchandise until sufficient evidence is received that money has been refunded to those buyers who returned merchandise. Upon receipt of sufficient evidence, the clerk shall advise the transient merchant by first class mail to obtain the stored merchandise. Twenty days after such notice is mailed, the clerk may sell or destroy such merchandise and papers, with any money received from the sale to be paid to the transient merchant or the bonding company based on payment of the refund to the customer.

(9) Display of Permit and Records

(a) 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.

(b) The transient merchant shall be required to display his/her issued permit on demand by a police officer and shall carry said permit on his/her person while engaged in permit selling activity.

(10) Revocation of Registration.

(a) Registration may be revoked by the Finance and Property Committee 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 ordinance has pending a criminal charge, a civil ordinance violation charge which relate to the particular selling activity or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling. (MC#920)

(b) Written notice of the hearing shall be served personally or pursuant to Section 20.01(4)(d) 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. (MC#966)

- (11) Penalty. Any person or firm adjudged in violation of any provision of this ordinance shall forfeit not less than \$10.00 nor more than \$1,000.00 for each violation per day plus costs of prosecution. Each violation shall constitute a separate offense. (MC#568)

20.02 CIGARETTES AND TOBACCO PRODUCTS (MC#835)

- (1) License Fee. Pursuant to Section 134.65(2)(a), the fee for a cigarette and tobacco products retailer license shall be \$100 for each year beginning July 1 and ending June 30, with the fee prorated in monthly increments for periods of less than a year. Only complete calendar months shall be considered for prorating of the fee.
- (2) Use of cigarettes and tobacco products by minors prohibited.
- (a) Except as provided in subsection (b), no person less than 18 years of age may do any of the following:
- (1) Buy or attempt to buy cigarettes or tobacco products.
- (2) Falsely represent his or her age for the purpose of receiving any cigarettes or tobacco products.
- (b) A child may purchase cigarettes or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under Section 134.65(1) of the Wisconsin Statutes.
- (c) A law enforcement officer shall seize any cigarettes or tobacco products involved in any violation of Subparagraph (2)(a) committed in his or her presence.

20.03 JUNK DEALER - LICENSE REQUIRED

- (1) No person or persons, association, partnership, firm or corporation shall hereafter in the City of Wisconsin Rapids keep, conduct or maintain any building, structure, yard or place for keeping, storing or piling, in commercial quantities, whether temporarily, irregularly or continually, or for the buying or selling at retail or wholesale or dealing in any old, used or second hand materials of any kind, including cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, brass, copper, or other metal, furniture, used motor vehicles or the parts thereof, or other articles which from its worn condition renders it practically useless for the purpose for which it was made, and which is commonly classed as junk, whether with a fixed place of business or as an itinerant peddler, without first having obtained and paid for a license, as hereinafter provided. One carrying on the aforesaid business shall be referred to herein as "junk dealer". (32)
- (2) Application for License. Every applicant for a license to engage in the business of junk dealing shall file with the city clerk a written application upon a form prepared and provided by the city, signed by the applicant or applicants. Said application shall state:
- (a) The name and residence of the applicant, if an individual, partnership or firm, or the names of the principal officers and their residences, if the applicant is an association or corporation.
- (b) The detailed nature of the business to be conducted and the kinds of material to be collected, bought, sold or otherwise handled.
- (c) The premises where such business is to be located or carried on.
- (3) Each application shall contain an agreement that the applicant accepts the license, if granted, upon the condition that it may be suspended for cause at any time by the mayor.
- (4) Inspections. The city clerk shall report such applications to the chief of police, health officer, fire chief and building inspector, who shall inspect or cause to be inspected such premises to determine whether it complies with all laws, ordinances, rules and regulations. Said premises and all structures thereon shall be so situated and constructed that the business of junk dealer may be carried on in a sanitary manner, shall contain no fire hazards, and shall be arranged so that a thorough inspection may be made at any time by the proper health, fire, building and police authorities.
- (5) Fencing Required. Each of the premises upon which the business of junk dealer is to be carried on shall be enclosed by a proper fence or other structure not less than seven feet in height, constructed so that no dust or other material may pass through. Said enclosure shall be maintained in good condition at all times. No article shall be piled so as to protrude above said enclosure.
- (6) Junk Yard Not Near Residences. No premises shall be used for carrying on the business of junk dealer when more than two buildings situated within a distance of 300 feet are used solely for residence purposes. Any junk dealer using premises for the business of junk dealing at the time of the passage of this ordinance, which does not comply with this section, may be granted a license for six months but said license shall not be renewed.