

# Village of Ashwaubenon

## Municipal Code Book

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### Article 6-2

# Municipal Code Book

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## Chapter 6 - Businesses

### Article 2 - Soliciting and Direct Sales

#### 6-2-114 Definitions

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

*Charitable Organization* means any benevolent, philanthropic, patriotic, or charitable partnership, association, or corporation, or one purporting to be such, which has maintained a permanent office in the county for at least the six months immediately preceding the date of the application.

*Complimentary Products or Promotion* means the giving of any merchandise, food product or promoting any product or service.

*Direct Seller or Sales* means any individual who, for him/herself, or for a partnership, association, corporation, or charitable or not-for-profit organization sells goods or services or takes sales orders for later delivery of goods or services at any location other than a permanent place of business. The sale of goods or services includes donations required for the retention of goods or services by a donor or prospective customer.

*Goods* means personal property of any kind and personal services offered or sold independently of, in conjunction with, or incidental to any personal property offered or sold.

*Motor vehicle* means as defined in Wis. Stats. § 340.01(35).

*Other Property* means private property and public property which is not a public right-of-way.

*Permanent Merchant* means an individual, partnership, association, corporation, or charitable or not-for-profit organization who operates an established business in the county from a permanent location for at least the six months preceding the date of application.

*Recognized Business* means a licensed corporation or other business entity located in the Village of Ashwaubenon, whether or not for profit, which primarily practices in the sale and exchange of goods or services.

*Services* means the performance of a duty or labor for the benefit of another and shall include services provided incidental to goods offered or sold.

*Sidewalk* means all areas of public right-of-way not intended for use by motor vehicles.

*Solicitor or Solicitation* means any individual who, for him/herself, or for a partnership, association or corporation goes from house to house, or place to place, selling or taking orders for goods or services for contributions of money, time, support or personal property of any kind of value.

*Special Event* means areas within the boundaries set by village board resolution for Packer training camp and Packer home games, Resch Center/Shopko Hall and Arena complex areas, and Lambeau Field area during the duration of such events

*Stand* means a stand, tent, cart, pushcart, or nonpermanent structure from which direct sales are conducted. A person shall also be deemed to have a stand, although there is no structure associated therewith, whenever a person remains in any one location for more than 15 minutes.

*Street* means those portions of public right-of-way intended for use primarily by motor vehicles.

*Tent* means a tent permit may be required from the village's inspection department.

Ord. No. 06-2-23, 6-27-2023; Ord. No. 07-2-10, 7-27-2010; Ord. No. O10-1-04, 10-12-2004; Code 2006, § 12.05(1)

#### **6-2-115 Intent**

The intent of these regulations is to protect the peaceful enjoyment of the residents of the village in their residence and throughout the community and to protect residents from commercial fraud whenever possible.

(Ord. No. O7-2-10, § 2, 7-27-2010)

#### **6-2-142 Direct Sales Permit Required**

No person shall engage in direct sales activity without the appropriate permit for the stand, vehicle, or location from which direct sales activity is conducted. A permittee shall be responsible for the acts and omissions of any employee, agent, or independent contractor while engaged in direct sales activity. Complimentary products and promotions shall be treated the same as direct sales.

(Code 2006, § 12.05(2))

#### **6-2-143 Solicitor's Permit Required**

No person shall engage in solicitation without a permit.

(Code 2006, § 12.05(3))

#### **6-2-144 Exemptions**

- (A) The following activities shall be exempted from the permit requirement of this article:
- (1) The delivery of goods to regular customers on established routes;
  - (2) The sale of goods at wholesale to dealers in such goods;
  - (3) A home visit specifically requested by the buyer;
  - (4) A sale required by statute or order of any court;
  - (5) A bona fide auction sale pursuant to law;
  - (6) Business sales and trade shows not open to the public;
  - (7) Merchants doing business inside the Resch Center, Shopko Hall or the Brown County Arena.

- (8) Merchants conducting business at the Oneida Nation Casino Complex (including the casino, Radisson Hotel, Bingo Hall, accessory structures and grounds). The Oneida Nation shall be responsible for any administration, regulation and coordination of such activities.
- (9) A temporary outdoor market event where two or more merchants engage in direct sales to sell or promote services, goods, and merchandise on the premises of a recognized business; and where the owner/operator of the recognized business is responsible for any administration, regulation, and coordination of such activities. A temporary outdoor market event shall not have a duration longer than 7 consecutive calendar days.

Ord. No. 06-2-23, 6-27-2023; Ord. No. 04-2-13, § 1, 4-23-2013; Ord. No. 07-2-10, § 3, 7-27-2010; Code 2006, § 12.05(4)

#### **6-2-145 Fee Exemptions**

A permit is required, but is exempt from the permit fee, for direct sales and solicitation conducted by any employee, member, officer or agent of a qualified state charitable or not-for-profit organization, provided that there is proof that such organization is registered under Wis. Stat. § 440.42.

(Code 2006, § 12.05(5); Ord. No. 07-2-10, § 3, 7-27-2010)

#### **6-2-146 Application**

- (A) *Form.* A person desiring to secure a permit shall make application to the village clerk-treasurer. The application must be received a minimum of six working days prior to the event.
- (B) *Identification.* The applicant shall present to the village clerk-treasurer a valid form of government-issued identification bearing the applicant's photograph.

(Code 2006, § 12.05(6)(a), (b); Ord. No. 07-2-10, § 3, 7-27-2010)

#### **6-2-147 Other permits**

Where applicable, the applicant shall present the village clerk-treasurer with the following for examination:

- (A) A valid retail food permit issued by the county health department; and
- (B) A seller's permit as required by Wis. Stat. § 77.52.

(Code 2006, § 12.05(6)(c); Ord. No. 07-2-10, § 3, 7-27-2010)

#### **6-2-148 Fees and Duration**

*Annual.* An annual permit shall be valid from February 1, or the day of its issuance, through January 31 the following year, unless sooner revoked. The fee for a direct sales permit and the fee for a solicitor's permit shall be on file in the office of the village clerk-treasurer.

(Code 2006, § 12.05(7); Ord. No. 03-3-05, 3-22-2005; Ord. No. 07-2-10, § 3, 7-27-2010)

#### **6-2-149 Procedure for Granting Permit**

- (A) *Public safety department review.* The public safety department shall review completed applications. The application may be denied by the public safety department if the public safety department determines any of the following:
- (1) That any portion of the application is false; or
  - (2) That the applicant has been convicted of a violation of an ordinance or law which substantially relates to the activity described in the application; or
  - (3) That authorities have received valid or substantial complaints against the application where similar business was conducted; or
  - (4) That the applicant failed to comply with any applicable provision of this section.
- (B) *Clerk-Treasurer Approval.* If the public safety department approves the issuance of the permit, the village clerk-treasurer may grant the permit without further review.
- (C) *Appeal.* Any applicant whose application has been denied by the public safety department may appeal such determination to the public works and protection committee, subject to final disposition by the village board. Appeal from a decision of the village board shall be to the circuit court for the county.
- (D) *Effect of Denial of Application or Appeal.* An applicant whose permit has been denied by the public safety department or whose appeal has been denied by the village board may not apply for a permit for a period of one year from the date of the original application.

(Code 2006, § 12.05(8); Ord. No. O7-2-10, § 3, 7-27-2010)

### **6-2-150 Direct Sales Regulations**

All direct sales shall comply with all of the following regulations:

- (A) *Location.* The direct sales permit will cover one location only, and must be posted in an area visible to customers at that location.
- (B) *Insurance.* The direct sales application must include a certificate of insurance and indemnification with the village named as an additional insured, with \$1,000,000.00 coverage. Should a certificate of insurance lapse or otherwise fail to be in force, a direct sales permit shall be considered invalid.
- (C) *Signs.* No signs may be placed on village rights-of-way or poles.
- (D) *Litter.* No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business, whether generated by the direct seller's business or the public at large. At least one clean, plastic-lined trash container clearly marked for litter shall be kept and maintained in the area by the direct seller.

- (E) *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 of a 75-foot radius from the source.
- (F) *Special Events.* No person shall engage in direct sales at a special event without permission of the public safety department.
- (G) *Display of Permits.* A direct seller shall prominently display the permit issued under this division, as well as any other permits required for the operation, in an area visible to all customers.
- (H) *Time Limitations.* No direct sales shall occur between 9:00 p.m. and 8:00 a.m.
- (I) *Ramps.* Sales are prohibited in any location where access to a disabled curb ramp or bus loading zone would be hindered.
- (J) *Use of Amenities.* No direct seller shall use any of the amenities, including, but not limited to, benches, flower planters, trees, shelters, kiosks, and light poles, for the display of merchandise or attachment of any equipment or advertising materials.
- (K) *Permission from Property Owner.* A direct sales applicant shall obtain permission from the owner of the property where direct sales are to be conducted in, on, or above. Proof of such permission shall be filed with the village clerk-treasurer at the time of application for a permit. The permittee shall possess such proof at the location where direct sales are occurring at all times while engaged in direct sales activity.
- (L) *Direct Sales on Public Property.* Direct sales are not permitted on public property. No person may engage in direct sales on a street unless conducted from a motor vehicle under the following limitations:
  - (1) *Warning Lights.* The vehicle from which sales are conducted shall display the warning lamps described in Wis. Stats. § 347.26(6)(a);
  - (2) *Obstruction of Traffic.* The vehicle shall remain stationary only as long as necessary to complete a sales transaction and in no case shall remain stationary longer than ten minutes, shall be positioned when stationary in a manner which does not obstruct a normal traffic lane, and shall be operated in a manner which does not obstruct the normal flow of traffic; and
  - (3) *Insurance.* A permittee must file a certificate of insurance and indemnification meeting the requirements set by the village board with the village clerk-treasurer prior to the issuance of a permit. Should the certificate lapse or otherwise fail to be in force, the permit shall be considered invalid.

(Code 2006, § 12.05(9); Ord. No. O3-2-05, 3-22-2005; Ord. No. O7-2-10, § 3, 7-27-2010)

## **6-2-151 Solicitation Regulations**

All solicitation shall comply with all of the following regulations:

- (A) *Disclosure.* After the initial greeting and before any other statement is made to a prospective customer, a solicitor shall identify himself, disclose the name of the company or organization he is affiliated with, if any, and the identity of goods or services offered for sale.
- (B) *Identification.* A solicitor shall display on his person the permit issued by the village, if applicable, and possess on his person a valid form of government issued identification bearing the permittee's photograph at all times while engaged in solicitation.
- (C) *Soliciting Contrary to Sign.* A solicitor shall not call at a place where a sign is displayed bearing the words "No Soliciting," "No Peddlers," or words of similar meaning.
- (D) *State Law Compliance.* A solicitor shall comply with the applicable provisions of Wis. Stats. Ch. 423.
- (E) *Streets.* Solicitation shall not occur in streets.
- (F) *Time Limitations.* No solicitation shall occur between the hours of 9:00 p.m. and 9:00 a.m., except by appointment.
- (G) *Prohibition.* No permit holder under this Section may solicit on the day of any Green Bay Packer game or Lambeau Field event.
- (H) Solicitation conducted by any person of a qualified state charitable or not-for-profit organization is permissible and requires permitting, provided that there is proof that such organization is registered under Wis. Stat. § 440.42. Further, the person representing the qualified state charitable or not-for-profit organization would be exempt from the permit fee. An application must be on file six business days prior to the event. This provision excludes educational fundraising by public and private learning institutions (K-12).

(Ord. No. O9-3-18, 9-25-2018, Ord. No. O8-1-16, 8-26-2016, Code 2006, § 12.05(10); Ord. No. O7-2-10, § 3, 7-27-2010)

#### **6-2-152 Suspension, Revocation and Nonrenewal**

A permit may be suspended, revoked, or nonrenewed for a violation of any provision of this article or a violation of a statute, ordinance, or regulation substantially related to the permitted activity. A hearing for the suspension, revocation, or nonrenewal of a permit shall be conducted before the public works and protection committee. At the conclusion of the hearing, the public works and protection committee shall recommend to the village board that the license be suspended for not less than ten days nor more than 90 days or revoked if it finds that the permittee committed a violation. The village board shall consider and take action on the recommendation of the public works and protection committee within 45 days after the committee adjourns the hearing. Appeal from a decision of the village board shall be to the circuit court for the county.

(Code 2006, § 12.05(11))

#### **6-2-153 Penalties**

- (A) *Forfeiture.* Any person violating a provision of this Chapter shall be subject to a forfeiture of not less than \$1.00 nor more than \$1,000.00 for each offense.



- (B) *License Suspension.* A court may impose a suspension period on any permit issued under this Chapter if the court finds that the permittee committed a violation within 24 months after committing one previous violation.
- (C) *License revocation.* A court may revoke any permit issued under this Chapter if the court finds that the permittee committed a violation within 24 months after committing two previous violations.
- (D) *Counting.* For purposes of counting previous violations, multiple violations arising out of the same incident and on the same date shall be considered a single violation.

(Code 2006, § 12.05(12))

**6-2-154 Wisconsin Statutes Not to Apply**

Wis. Stats. Ch. 68 shall not apply to the administrative process outlined in this article.

(Code 2006, § 12.05(13))