

CHAPTER 4

Transient Merchants (Ordinance No. 2013-12 Dated 07/01/13)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
7-4-1	License Required		
7-4-2	Definitions		
7-4-3	Exemptions		
7-4-4	Application		
7-4-5	Investigation		
7-4-6	Appeal		
7-4-7	Issuance of License		
7-4-8	Regulation of Transient Merchants		
7-4-9	Records		
7-4-10	Revocation of License		

Sec. 7-4-1 LICENSE REQUIRED.

It shall be unlawful for any transient merchant to engage in sales within the Village of Caledonia without being licensed for that purpose as provided herein.

Sec. 7-4-2 DEFINITIONS.

In this Chapter:

- (a) “**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 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.
- (b) “**Permanent merchant**” means any person who, for at least one year prior to the consideration of the application of this Chapter to said merchant, (1) has continuously operated an established place of business in the local trade area among the communities bordering the place of sale or (2) has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his/her residence.
- (c) “**Merchandise**” shall include 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) “**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 Village Clerk.

Sec. 7-4-3 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 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 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 sec. 440.41, Stats. Any charitable organization engaging in the sale of merchandise and not registered under sec. 440.41. Stats., or which is exempt from that statute's registration requirements, shall be required to apply 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 one year prior to the date the complaint was made;
- (k) Any individual licensed by an examining board as defined in s. 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.
- (m) Any person selling or offering for sale merchandise the proceeds of which will benefit any primary or secondary school in Racine County or any club, sports team, activity or other organization sponsored by or benefiting any primary or secondary school in Racine County.

Sec. 7-4-4 APPLICATION.

(a) **Form.**

Applicants for a license must complete and return to the Clerk an application 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 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 the Village;
 - (10) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five years, and the nature of the offense and the place of conviction.
- (b) **Documentation.**
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) 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 90 days prior to the date the application license is made.
 - (4) Two (2) color photographs of the applicant that is no larger than 2"x 2" ("passport size"), unless a larger photograph is deemed acceptable by the Clerk.
- (c) **Fee.**
- (1) At the time the application is returned, a fee, in an amount set by resolution of the Village Board from time-to-time, shall be paid to the Village Clerk to cover the cost of processing said application.
 - (2) Upon payment of said fee and the signing of said statement and subject to Sec. 7-4-5, the Clerk may issue a license to the applicant as a transient merchant

Sec. 7-4-5 INVESTIGATION.

- (a) **Background Check.**
Upon receipt of each application, the Clerk shall investigate the statements made in such application and the applicant's background.
- (b) **Standards.**
The Clerk shall refuse to license the applicant if it is determined, pursuant to the investigation above, that the applicant is not qualified because: 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 Sec. 7-4-4.

(c) **Optional Review By Committee.**

Prior to issuing a license to any applicant, the Clerk may require, at his or her discretion, a local director, manager or supervisor of the business or organization for which the applicant plans to sell merchandise to appear, before the Village Legislative and Licensing Committee to explain the nature and purpose of the business or organization and to answer such reasonable questions as the Committee may pose. If the applicant plans to sell merchandise for his or her own business or organization, the applicant shall personally so appear.

Sec. 7-4-6 APPEAL.

Any person refused or denied licensure may appeal the denial via the appeal procedure provided in Title 4 of this Code.

SEC. 7-4-7 ISSUANCE OF LICENSE.

(a) **Issuance.**

Upon compliance with the foregoing requirements, completion of the investigation described in Sec. 7-4-5, and payment of the fee as set forth in Sec. 7-4-4(c), and if the applicant is qualified, the Clerk may license the applicant as a transient merchant and issue a license to the applicant. If the application was referred to the Legislative and Licensing Committee under Sec. 7-4-5(c), then the Committee shall make the decision on whether the applicant is qualified and shall direct the Clerk to either issue the license or deny the license and shall state the reasons for such denial.

(b) **Contents.**

Such license shall contain the signature of the Clerk, the name, address and a photograph of the transient merchant, a description of the type of goods or services being sold or the nature of the solicitation, the period during which the license is operative and the license number of any vehicle used for sales or solicitations.

(c) **Term.**

Licenses shall expire on July 1 following the date of issuance. Every licensee, while exercising his license, shall carry the license on his or her person or have it prominently displayed wherever he or she is conducting such licensed business and shall exhibit the license upon demand to any Village official, to any Police Officer, or to any customer or prospective customer. In addition, the licensee shall wear a readily visible photo identification card displaying his/her name as well as the organization for which he/she is selling merchandise.

Sec. 7-4-8 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 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.
- (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 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 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 \$25, in accordance with the procedure as set forth in sec. 423.203, Stats.; 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 Secs. 423.203(1)(a)(b) and (c), (2) and (3), Stats.
- (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.

Sec. 7-4-9 RECORDS.

The Chief of Police shall report to the Clerk all convictions for violation of this Chapter and the Clerk shall note any such violation on the record of the license convicted.

Sec. 7-4-10 REVOCATION OF LICENSE.

- (a) Licensure may be revoked by the Village Board after notice and hearing, if the applicant made any material omission or materially inaccurate statements in the application for license, 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 licensee's fitness to engage in selling.
- (b) Written notice of the hearing shall be served personally or pursuant to Sec. 7-4-4(c)(2) above on the licensee 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. Any licensee whose license is revoked is ineligible to obtain a new license under this Chapter for one year from the date such license was revoked."