

TOWN OF WESCOTT ORDINANCE REGULATING
AND LICENSING DIRECT SELLERS,
TRANSIENT MERCHANTS, AND SOLICITORS
ORDINANCE #7-81

WHEREAS, it is in the interests of the public that direct sellers, transient merchants, and solicitors within the Town of Wescott be regulated and licensed;

WHEREAS, the Town Board of the Town of Wescott has power under Village Powers pursuant to Wisconsin Statutes 60.22(3) and 66.083 to enact an ordinance regulating and licensing direct sellers, transient merchants, and solicitors;

NOW THEREFORE, the Town Board of Supervisors of the Town of Wescott, Shawano County, Wisconsin, does hereby ordain as follows:

REGULATIONS AND LICENSING OF
DIRECT SELLERS, TRANSIENT MERCHANTS AND SOLICITORS

Section I. DIRECT SALES AND SOLICITATIONS: REGISTRATION REQUIRED. It shall be unlawful for any direct seller, transient merchant or solicitor to engage in direct sales or solicitations within the Town without being registered and licensed for that purpose as provided herein.

Section II. DEFINITIONS

(a) Direct Seller. Any individual who, for himself or for a partnership, association or corporation, sells good or services or takes sales orders for the later delivery of goods or services at any location other than the permanent business place or residence of said individual, partnership, association or corporation and shall include, but not be limited to, peddlers, canvassers and transient merchants. The sale of goods and services includes donations requested or required by the direct seller for the retention of goods or services by a donor or prospective customer.

(b) Transient Merchant. Any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the Town or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within said Town and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicles, trailer, tent, railroad box car or boat, public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the Town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm or corporation who, while occupying such temporary location, does not sell from stock, but exhibits samples for the purpose of securing orders for future delivery only. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this section merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader or auctioneer.

(c) Permanent Merchant. A direct seller or one representing a merchant who, for at least one year prior to the submission of an application pursuant to this section, has continuously operated an established place of business in this Town or has continuously resided in this Town and now does business lawfully from his residence.

(d) Goods. Personal property of any kind and includes goods provided incidental to services offered or sold.

(e) Solicitor. Any individual who, for himself or for any other person, organization, society, association or corporation, personally solicits money, property or financial assistance of any kind from persons other than members of such organization, society, association or corporation.

(f) Charitable Organization. Any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation (for which there is provided proof of tax exempt status pursuant to Section 501(c)(3) or (4) of the United States Internal Revenue Code).

(g) Applicant. Each individual applying for registration and licensing as a direct seller, transient merchant or solicitor.

(h) Registrant. Each individual registered by the Town Clerk and to whom a license has been issued.

Section III. EXEMPTIONS

(a) 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 goods at wholesale to dealers in such goods.

3. Any farmer or truck gardener selling agricultural products of the farm or garden occupied or cultivated by such person.

4. Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this County and who delivers such goods in his regular course of business.

5. Any person who has an established place of business where the goods being sold are 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.

6. Any person who has had, or represents a company which has had, a prior business transaction such as a prior sale or credit arrangement with a prospective customer.

7. 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, on an occasional basis, including garage or rummage sales, all of which do not exceed 10 days per calendar year.

8. This ordinance does not apply to transient merchants while doing business at special events authorized by the Town Board. This includes, but is not necessarily limited to the Art and Crafts Show, and the Old Time Music and Crafts show held during past summers at the Mielke Theater grounds, and any other event specifically named by the Town Board now or in the future.

(b) Charitable organizations registered with the Wisconsin Department of Regulation and Licensing pursuant to Section 440:41, Wisconsin Statutes, shall be exempt from the requirements set forth in subsection (4)(a), (4)(c) and (6) of this section if the organization has provided the individual representing it with credentials stating the name of the organization, the name representative and the purpose of the solicitation and provided and provided, further that said individuals provide the Town Clerk with the following information:

1. The individual's name and permanent address.
2. The name and address of the organization represented.
3. The name and address of the officers or directors of the organization.
4. The nature of the sales or solicitations.
5. Proposed dates and time of sales or solicitations.

A license to a charitable organization operative for the dates provided to the Town Clerk shall be issued without charge upon compliance with the foregoing.

(c) Any religious organization from which there is provided proof of tax exempt status pursuant to Section 501(c)(3) of the United States Internal Revenue Code shall be exempt from the requirements set forth in subsections (4)(a), (4)(c) and (6). The provisions of subsection (3)(b) above shall be applicable to such organizations.

(d) Any veteran who holds a special state license pursuant to Section 440.51, Wisconsin Statutes, shall be exempt from the provisions of subsection (4) and (6) provided that such veteran provides the Town Clerk with the following information:

1. The veteran's name and permanent address.
2. The nature of the sales or solicitations.
3. Proposed dates and times of sales or solicitations.

Section IV. REGISTRATION REQUIREMENTS.

(a) Applicants for licenses must complete and return to the Town Clerk a registration form furnished by the Town Clerk which shall require the following information:

1. Name, permanent address, telephone number and temporary address, if any.
2. Age, height, weight and color of hair and eyes.
3. Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by or whose merchandise is being sold.
4. Temporary address and telephone number from which sales or solicitations will be conducted, if any.
5. Nature of sales or solicitations to be conducted and a brief description of the goods and/or services offered.
6. Proposed dates and times of sales or solicitations.
7. Proposed method of delivery of goods, if applicable.
8. Make, model and license number of any vehicle to be used by applicant in the conduct of sales or solicitations.
9. Last 3 cities, villages and towns where applicant conducted similar sales or solicitations.

10. Place where applicant can be contacted for a least seven days after leaving this Town.

11. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's sales or solicitation or other transient merchant activities within the last 5 years, the nature of the offense and the place or conviction.

12. A recent photograph of the applicant that shows the head and shoulders.

(b) Applicants shall present the following items to the Town Clerk for examination:

1. A driver's license or some other proof of identity as may be reasonably required.

2. 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 and dated not more than 90 days prior to the date the application for license is made.

3. A state certificate of examination and approval from the sealer of weights and measures where applicants's business requires use of weighing and measuring devises approved by state authorities.

(c) No application shall be processed until the application fee in the amount of \$15.00 has been paid to the Town Clerk to cover the cost of processing said application.

Section V. INVESTIGATION; DENIAL OF APPLICATION

(a) Upon receipt of a completed registration form, the Town Clerk shall immediately make an investigation. The Town Clerk or his designee shall complete the investigation and file a report with 72 hours.

(b) The Town Clerk shall refuse to issue a license to the applicant for any of the following reasons:

1. The application contains any material omission or materially inaccurate statement.

2. 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 solicitation.

3. The applicant failed to comply with any applicable provision of paragraph (4)(b) above.

4. If as a result of the investigation required under this section, the applicant's business or character are found to be unsatisfactory, the Town Clerk shall endorse on said application his disapproval and his reasons for the same and file the application. The Clerk shall notify the applicant that his application was not approved and no license will be issued.

(c) In the event the Town Clerk shall refuse to issue the applicant a license, the Town Clerk shall provide the applicant an opportunity to refute said reasons for denial of the license. After the Town Clerk has made a final determination, he shall either issue the license or provide the applicant with written reasons for refusing to issue the license, within 7 days thereafter.

(d) Any person denied application for a license may appeal such action by filing with the Town Board within 14 days after written notice of the denial a written statement requesting a hearing and setting forth the grounds for the appeal. The Town Board shall set a time and place for the hearing. Written notice of the time and place of the hearing shall be given to the applicant at least 24 hours prior to the time set for the hearing. Any appeal request constitutes acknowledgment of decision notice from the Clerk, and operates as a waiver to any claim of a defect in such notice.

Section VI. REGISTRATION & ISSUANCE OF LICENSE

(a) Upon compliance with the foregoing requirements, and payment of the license fee as hereinafter set forth, the Town Clerk shall register the applicant as a direct seller, transient merchant or solicitor and issue a license to the applicant. The license shall be operative only during the days requested on the registration form, not to exceed one year.

(b) Such license shall contain the signature of the Town Clerk, the name and address of the direct seller, transient merchant or solicitor, the type of goods or services being sold or the nature of the solicitation, the dates during which the license is operative and the license number of any vehicle used for sales or solicitation.

(c) Registrants shall exhibit their license at the request of any citizen or police officer.

Section VII. REGULATION OF DIRECT SELLERS AND SOLICITORS

(a) Prohibited Practices.

1. A direct seller or solicitor shall be prohibited from:
 - a. Calling at any dwelling or other place between the hours of 8:00 p.m. and 9:00 a.m. except by appointment.
 - b. Calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning.
 - c. Calling at the rear door of any dwelling place.
 - d. Remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

2. A direct seller or solicitor shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods or services offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A direct seller representing a charitable or religious organization shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable or religious purpose for which the individual is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods or services, or the base cost of supplies purchased for resale.

3. No direct seller or solicitor shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales or solicitations are made from vehicles, all traffic and parking regulations shall be observed. No direct seller or solicitor shall have any exclusive right to any location in the public streets. No direct seller or solicitor shall sell or solicit in any congested area or where the public will be

impeded or inconvenienced. For the purpose of this section, the judgement of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

4. No direct seller or solicitor shall make any loud noises or use any sound amplifying device to attract customers or donors if the noise produced is capable of being plainly heard outside a one-hundred foot radius of the source.

5. No direct seller or solicitor shall allow rubbish or litter to accumulate in or around the area in which he is conducting business or making solicitation.

(b) Disclosure Requirements

1. After the initial greeting and before any other statement is made to a prospective customer or donor, a direct seller or solicitor shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.

(c) Each day of violation of this ordinance shall constitute a separate offense.

Section VIII. ENFORCEMENT

(a) In addition to the other remedies and procedures stated here, the Town may enforce this ordinance by any means authorized by law, including but not limited to enforcing the provisions of this ordinance by injunction.

(b) This ordinance shall be enforced by the citation procedure of Enforcement of Town Ordinances as adopted by Ordinance #2-81. As a part of this ordinance, it is hereby directed that the following bond schedule be established for use of citations issued under this ordinance.

<u>Ordinance Title</u>	<u>Offense</u>	<u>Deposit & Costs</u>
First violation	1st	\$20.00 + court costs in at time of citation
Second violation or subsequent violations	2nd or subsequent	\$50.00 + court costs in at time of citation

The foregoing ordinance had amendments approved by the town board on May 14, 1991, and appears with amended text herein, after original passage on November 10, 1981.

Michel Schuler, Chairman

Russell Robbins, Supervisor

Willis Qualheim, Supervisor

Filed this January 14, 1992.

Arthur W. Gast, Town Clerk

The Town Board of the Town of Wescott does ordain as follows:

SECTION 1: AUTHORITY. The Town Board has the specific statutory authority, powers and duties, pursuant to the specific statutory sections noted in this ordinance, including s. 134.71 and by its adoption of village powers, to regulate, control, license, register or permit persons engaged in certain uses, activities, businesses and operations within the Town, to access appropriate fees for the licenses and to enforce, by revocation or penalty, the provisions of this ordinance.

SECTION 2: ADOPTION BY REFERENCE. Except for any provision herein that may be stricter, the provisions of s. 134.71 are adopted by reference.

SECTION 3: COVERED BUSINESSES. This ordinance regulates pawnbrokers, secondhand article dealers, secondhand jewelry dealers, and secondhand article dealer mall or flea market operating beyond the limits allowed in the Transient Merchants ordinance, Code 8.01.

SECTION 4: LICENSE APPLICATION. In addition to the requirements of s. 134.71(5), applicants shall detail:

A. Any jail or prison time served greater than 30 days consecutively, identifying the time frame served and the charge(s) that caused such imprisonment;

B. Criminal record history for all owners, officers and directors, to the same extent required of an individual;

C. Identifying number for sales tax with Wisconsin Department of Revenue;

SECTION 5: BOND. The applicant shall furnish a bond issued by a commercial bond company which has a current rating of A or better on A.M. Best rating system, or a comparable rating of a different independent rating firm. The initial bond amount shall be assuring reimbursement to the town for enforcement action in the minimum amount of \$1000. This amount may be increased as the result of any disciplinary action.

SECTION 6: LICENSE YEAR. Licenses are valid as follows:

1. For a pawnbroker, secondhand article dealer or secondhand jewelry dealer, January 1 or a later date of issuance until the following December 31.

2. For a secondhand article dealer mall or flea market, from May 1 of an odd-numbered year or its later issuance date until April 30 of the next odd-numbered year.

3. If less than half the license time remains at the time of application or board consideration, the fee shall be one-half of the full amount.

SECTION 7: MINORS. No pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from any minor. However, a licensed operator may sell any item held beyond the minimum holding period to a minor when that customer has the consent of an adult parent, guardian or

spouse who signs a consent form in the presence of the licensed operator or an employee of the operator. No firearm may be sold to a minor.

SECTION 8: DISCIPLINE. Violation of this ordinance, s. 134.71 or the statutes referred to therein, or any law or activity relating to lack of honesty, whether or not resulting in a criminal conviction, is grounds for temporary suspension, or one year revocation with imposition of further limits on operation possible. Prior to taking any disciplinary action, the town shall provide written notice to licensee by personal service or by written notice sent by fax, mail or non-oral communication method to the last known destination of licensee. Arrest, conviction, or appropriate notice of violation from a governmental agency may serve as grounds for initiating disciplinary action. In the event the town board finds any suspension or revocation is justified, even if stayed, the licensee shall, within 30 days of billing, reimburse town cost of enforcement as a condition of licensed operation. Failure to reimburse shall result in automatic suspension of the license until payment is made. The Clerk or Treasurer may insist on payment by cash, cashiers check or postal money order. The board may impose new conditions on business operations when reviewing such matters. This provision is in addition to s. 134.71 (10).

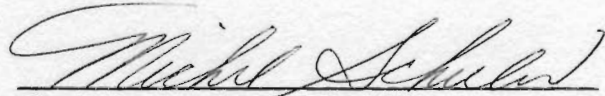
SECTION 9: HOURS OF OPERATION. No licensed operator may conduct business except between the hours of 9 a.m. to 9 p.m. On Sundays and state holidays, between 12 noon and 5 p.m. is allowed.

SECTION 10: ZONING. In addition to this ordinance, the operator shall fully comply with all zoning conditions.

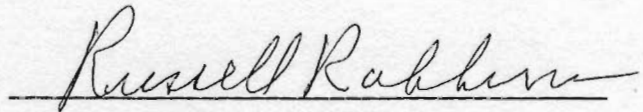
SECTION 11: ENFORCEMENT. In addition to license disciplinary action, the town may seek a court injunction to direct or prohibit activity or practices.

Passed September 15, 1998.

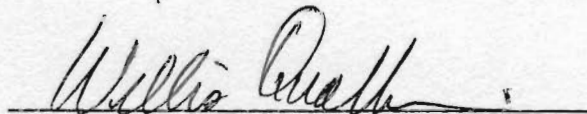
Vote for: 3 against: 0



Chairperson Michel Schuler



Supervisor Russell Robbins



Supervisor Willis Qualheim

Posted in the following 3 public places
in the town within 30 days of passage

8.02

on September 23, 1998 :

Town office
Town hall
Town Fire Dept.

Karla K Duchac

Clerk Karla Duchac