

**SECTION 4.08 OF THE**  
**TOWN OF SHEBOYGAN MUNICIPAL CODE**  
**REGULATING TRANSIENT MERCHANTS**

Section 1. **Creating Code.** Section 4.08 of the Town of Sheboygan Municipal Code is hereby created to read as follows:

**4.08 REGULATION OF TRANSIENT MERCHANTS**

**(1) Purpose.** This section is enacted to protect the health, safety and general welfare of the Town by providing for the regulation and registration of transient merchants, peddlers, and direct sellers, to ensure fair dealings with purchasers and to acquire adequate information to correct any problems that may occur after a sale is made.

**(2) Registration Required.** No transient merchant may engage in sales within the Town without being registered for that purpose as provided herein.

**(3) Definitions.** In this section, these words or phrases shall have the following meanings:

**(a) Charitable organization** – Any nonprofit entity registered under § 440.41 of the Wisconsin Statutes.

**(b) Merchandise or Goods** – Personal property of any kind, 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. 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.

**(c) Permanent merchant** – Any person who, for at least one year prior to the consideration of the application of this section to said merchant:

1. has continuously operated an established place of business in Sheboygan County, or

2. has obtained a conditional use permit or other approval from the Town Board.

**(d) Transient merchant** – Any person who engages in the sale of merchandise within the Town under circumstances indicating that they do not intend to become and do not become a permanent merchant of such place.

**(4) Exemptions.** The following are exempt from this section:

**(a)** Any person delivering newspapers, fuel, food or water to regular customers on established routes;

**(b)** Any person selling merchandise at wholesale to dealers in such merchandise;

(c) Any person selling agricultural products grown by the person or someone in his/her immediate family;

(d) Any permanent merchant who takes orders away from the established place of business for merchandise regularly offered for sale by such merchant, and who delivers such merchandise in his/her 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 selling, or offering for sale, a service unconnected with the sale, or offering for sale, of merchandise;

(g) Any person holding a legally required sale or auction;

(h) Any person who engages in direct sales for or on behalf of a charitable organization which is registered pursuant to § 440.41, Wis. Stats.

(i) Any person less than 18 years of age selling a product, service or ticket having an individual item cost of less than \$50.00 and promoted and sponsored by a school, youth, religious, nonprofit or charitable organization.

(j) Any transient merchant while doing business at a special event which is authorized by the Town Board and who is registered under subsection (7), below.

**(5) Registration.**

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

1. The registration fee as set forth below;
2. Name, permanent address and telephone number, and temporary address, if any;
3. Age, height, weight, color of hair and eyes;
4. Name, address, telephone number, website and email of the contact person for the entity that the applicant represents or is employed by, or whose merchandise is being sold;
5. Temporary address and telephone number from which business will be conducted, if any, and written permission from the owner of the property for applicant to conduct business on that property;
6. Nature of business to be conducted, a brief description of the merchandise and any services offered, and the dollar value of the most expensive merchandise or service offered;
7. Dates during which selling activity shall occur;
8. Proposed methods of delivery of merchandise, if applicable;
9. Make, model and license number of any vehicle to be used by applicant in the conduct of his/her business;

**10.** Names of the last five municipalities, if applicable, where applicant conducted his/her business immediately prior to making this registration;

**11.** Place where applicant can be contacted for at least seven days after leaving this Town;

**12.** 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) Identification & Certification.** Applicants shall present to the clerk for examination:

**1.** A valid driver's license or other proof of identity;

**2.** If applicable, 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.** If applicable, 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 shall state that applicant is free from any contagious or infectious disease, dated not more than 90 days prior to the date the application is made.

**(c) Filing of Application.** All applications shall be filed at least 15 business days prior to the applicant conducting business within the Town to allow for the investigation described in Section F.

**(d) Registration Period.** Registration shall be valid for the current calendar year (January 1 through December 31). All registrations shall expire on December 31 of the year of application, regardless of when the application was made.

**(e) Fees.** Applications are not complete unless they include the registration and background check fees as established in Section 11.05 of this Municipal Code.

**(f) Display and Possession of Registration Card.** The registration card issued pursuant to this section shall be conspicuously displayed at all times when the applicant is engaged as a transient merchant in this Town so said card is visible to the public and/or law enforcement officials.

**(6) Investigation.**

**(a) Verification.** Upon receipt of a complete application, the Clerk shall conduct an investigation of the statements made therein.

**(b) Denial.** The Clerk shall not register the applicant if it is determined that:

**1.** the application contains any material omission or materially inaccurate statement;

**2.** complaints of a material nature were received against the applicant by authorities in the municipalities in which the applicant recently conducted business;

3. the applicant violated a crime or other regulation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or

4. the applicant failed to comply with any applicable provision of subsection (5), above.

**(7) Alternative Registration.**

**(a) Special Event Registration.** As an alternative to the registration requirements and procedures set forth above, recognized organizations sponsoring special events such as community festivals, craft fairs, or other events authorized by the Town Board, may assume responsibility for registration of its authorized transient vendors for that event, as provided in this section.

1. At least 15 business days prior to the special event, the sponsoring organization shall complete and return to the Clerk a special event transient vendor form, furnished by the Clerk, containing the following information:

a. Name of sponsoring organization and name, address and phone number of person responsible for registering transient merchants;

b. Date(s) and place of the special event;

c. Name and address of each authorized vendor, along with a list of the names of each person expected to work for that vendor during the special event;

d. A brief description of the merchandise and any services being offered for sale; and

e. Any other information deemed necessary by the Town.

2. The sponsoring organization shall submit the registration form with a fee for each authorized vendor to be registered for the event, as set forth in the Town's Fee Schedule.

**(b) Failure to Register.** Failure on the part of the sponsoring organization to register its authorized transient vendors as provided in this section shall subject the organization to a late registration fee of \$10 per unregistered vendor, plus the usual required fee. In addition, for knowing or intentional violations of this subsection or attempts to evade registration, such organizations may be prohibited from registering its authorized transient vendors for future events under this subsection.

**(8) Regulations.**

**(a) Prohibited Practices.**

1. A transient merchant shall be prohibited from calling at any premises between 9:00 p.m. and 8:00 a.m. except by appointment; calling at any premises displaying a "No Solicitors" sign, or one of similar words or meaning; calling at the rear door of any dwelling; 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.

**3.** No transient merchant shall impede the free use of sidewalks, streets or right-of-way 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 more than one hundred feet from the source.

**5.** No transient merchant shall conduct sales in a period or place not specifically noted on the license.

**6.** No registered transient merchant shall allow another person to use his/her transient merchant registration card to engage in activities covered by this section.

**(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 § 423.202, Wis. Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact, conforming to the requirements of §§ 423.203(1)(a), (b), and (c), (2) and (3), Wis. 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.

**(9) Records.** The Clerk shall keep a record of all registered transient merchants within the Town. If any transient merchant violates this section, the Clerk shall note any such violation on the record of the registrant.

**(10) Revocation.**

**(a) Reason for Revocation.** After notice and a hearing, the Town Board may revoke a registration, 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 section; or, was convicted of any crime or section or statutory violation which is directly related to the registrant's fitness to engage in selling.

**(b) Notice of Hearing Provided.** Written notice of the hearing shall be served personally on the registrant, or sent by certified mail to the registrant's permanent address supplied on the application, 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 facts upon which the hearing will be based.

**(11) Appeal.** Any person refused or denied registration, or whose registration is revoked, may appeal the denial or revocation to the Board of Appeals. Those procedures customarily used to effectuate an appeal to the Board of Appeals shall apply.

**(12) Penalty.** Any person found in violation of this section shall forfeit not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense, and not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1000.00) for subsequent offenses, plus the costs of prosecution. Each separate sale or other violation shall constitute a separate offense.

Section 2. **Amending Code.** Section 11.05 of the Town of Sheboygan Municipal Code is hereby amended to add the following fees:

Transient Merchant Registration (§ 4.08) ..... \$50.00  
Special Event Transient Vendor Registration (per vendor--§ 4.08) \$25.00

Section 3. **Severability.** Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

Section 4. **Effective Date.** This Ordinance shall take effect upon enactment and publication as required by law.

Enacted on June 15<sup>th</sup>, 2010.

**TOWN OF SHEBOYGAN** By **DANIEL W. HEIN**, Chairperson

**CERTIFICATE OF ENACTMENT**

I hereby certify that the foregoing Ordinance was duly enacted by the Board of Supervisors of the Town of Sheboygan on the date indicated above.

Dated: June 15<sup>th</sup>, 2010 **CATHERINE A. CONRAD**, Clerk

Published/Posted on June 18, 2010.