

## MARATHON COUNTY ORDINANCE

### 12.01 LICENSES REQUIRED.

A license shall be required for each of the following businesses or activities at the indicated license fee, which shall be for one year unless otherwise indicated.

- (3) DIRECT SELLERS. (Am. #0-32-97)
  - (a) \$25 fee.
  - (b) Direct sellers Business. \$50 fee.

### 12.02 GENERAL PROVISIONS AS TO LICENSES.

- (1) LICENSES OR PERMITS REQUIRED. No person shall engage in any trade, profession, business or activity in the County for which a license or permit is required by any provision of this Code without first obtaining such license or permit from the County in the manner provided in this section, unless otherwise specifically provided.
- (2) APPLICATION. Unless otherwise provided, application for a license or permit shall be made in writing to the County Clerk upon forms provided by the County and applicant shall state the location of the proposed activity and such other facts as may be required for or be applicable to the granting of such a license or permit.
- (3) PAYMENT OF FEE. The fees required for any license or permit shall be paid at the office of the County Clerk before the granting of the license or permit. No fee paid shall be refunded unless the license or permit is denied.
- (4) BOND AND INSURANCE. All required bonds shall be executed by 2 sureties or a surety company and be subject to the approval of the County Board. Where policies of insurance are required, such policies shall be approved as to substance and form by the District Attorney. Satisfactory evidence of coverage by bond or insurance shall be filed with the County before the license or permit is issued.
- (5) APPROVAL OR DENIAL OF LICENSES. (1) Where the approval of the County or State officer is required prior to the issuance of any license or permit, such approval shall be presented to the County before any license or permit is issued.
- (6) CERTIFICATE. Licenses or permit certificates shall show the name of the licensee or permittee, the date of issue, the activity licensed and the term of the license or permit. The Clerk shall keep a record of all licenses and permits issued.
- (7) TERMS.
  - (a) Unless otherwise provided, the license year shall end on June 30 of each year.
  - (b) Where the issuance of licenses for period of less than one year is permitted, the effective date of such license shall commence with the date of issuance.
  - (c) Permits shall be issued for the term set forth in the permit.
- (8) EXHIBITION OF CERTIFICATE. Every licensee or permittee shall carry his license or permit certificate upon his person at all times when engaged in the activity for which the license or permit was granted, except that where such activity is conducted at a fixed place or establishment, the license or permit certificate shall be exhibited at all times in some conspicuous place in his place of business. The licensee or permittee shall exhibit the license certificate when applying for a renewal and upon demand of any law enforcement officer or person representing the issuing authority.
- (9) TRANSFER. Unless otherwise provided, no license or permit shall be transferable or assignable.
- (10) INSPECTION. County officials may enter upon the premises where any licensed or permitted activity is being conducted for the purpose of inspection at any reasonable time.
- (11) REVOCATION AND SUSPENSION OF LICENSES.
  - (a) Except as otherwise provided, any license issued under this chapter may be revoked for cause by the County Board. No license shall be revoked except upon written verified complaint filed with the County Board by the Chairman, a member of the county Board, the Sheriff or a resident of the County. The licensee shall be served with a written copy of the charges and

shall be given an opportunity to be heard before the County Board. The licensee shall be given notice of such hearing, which shall be not more than 20 nor less than 5 days after notice, except as otherwise agreed between the parties.

- (b) At such hearing, the licensee shall be entitled to be represented by counsel, shall have the right to present and cross-examine witnesses and, upon request, may have subpoenas issued by the County Board Chairman or presiding officer of the board to compel the attendance of witnesses.
- (c) After hearing the evidence, the Board may revoke such license or impose a limited period of suspension. The determination of the county Board shall be final, subject to review under Ch. 68, Wis. Stats.
- (d) The Sheriff's Department shall repossess any license revoked hereunder.
- (e) If the licensee does not apply for a hearing within the time provided, the license may be revoked by the County Board.

#### **SEC. 12.05. DIRECT SELLERS.**

- (1) Registration required. No person or business shall engage in direct sales within the County without being registered for that purpose as provided in this section.
- (2) *Definitions.*
  - (a) *Direct Seller.* Any individual who for himself or for a partnership, association or corporation, sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such individual, partnership, association or corporation and shall include but not be limited to peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.
  - (b) *Direct Seller Business.* Any individual, partnership, corporation, or business entity of any type whatsoever, which employs Direct Sellers as defined in (a) above within Marathon County either on a full-time or a part-time basis and is not a Permanent Merchant as defined in (c) herein.
  - (c) *Permanent merchant.* A direct seller who, for at least six months prior to the consideration of the application of this section to such merchant, has continuously operated an established place of business in this County or has continuously resided in this County and now does business from his residence.
  - (d) *Goods.* Includes personal property of any kind and shall include goods provided incidental to services offered or sold.
  - (e) *Charitable organization.* Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation or one purporting to be such except that "charitable organization" shall not include any religious organization.
  - (f) *Clerk.* The County Clerk.
- (3) *Exemptions.* The following shall be exempt from all provisions of this section:
  - (a) Any person delivering newspapers, fuel, dairy products, alcoholic and nonalcoholic beverages or bakery goods to regular customers on established routes.
  - (b) Any person selling goods at wholesale to dealers in such goods.
  - (c) Any person selling agricultural and forest products which such person has grown.
  - (d) 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 their regular course of business.
  - (e) Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, with whom the buyer has initiated contact and specifically requested a visit to the buyer's home.
  - (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 goods.

- (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 such organization, provided that there is submitted to the Clerk proof that such charitable organization is registered under § 440.41 Wis. Stats.
- (j) Any person who claims to be a permanent merchant, but against whom a 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 six months or purchased the premises from which he is conducting business or proof that such person has conducted such business in this County for at least six months prior to the date complaint was made.
- (k) Auctions regulated by Wisconsin Statutes, Chapter 480.

(4) *Registration.*

- (a) Individuals and businesses required to register must complete in person and file with the County Clerk a registration form furnished by the Clerk which shall require the following information and documentation of said information:
  - 1. Name, date of birth, social security number, permanent address and telephone number and temporary address, if any.
  - 2. Age, height, weight, color of hair and eyes, and a picture form of identification.
  - 3. State work permit, if applicable.
  - 4. Name, address and telephone number of the person, firm, association or corporation the direct seller represents or is employed by or for which merchandise is being sold.
  - 5. Temporary address and telephone number from which business will be conducted, if any.
  - 6. Nature of business to be conducted and brief description of the goods offered and any services offered.
  - 7. Proposed method of delivery goods, if applicable.
  - 8. Make, model and license number of any vehicle to be used by an individual or by the business in the conduct of his business.
  - 9. Last three cities, villages or towns where individuals and businesses conducted similar business.
  - 10. Place where individuals and businesses can be contacted for at least 30 days after leaving this County or after delivering goods ordered as a result of applicant's direct sellers activities in this County, whichever is later.
  - 11. Statement as to whether any individual or the businesses have been convicted of any crime or ordinance violation related to transient merchant business within the last five years; the nature of the offense and the place of conviction.
  - 12. Statement as to whether there is pending against any individual or business any criminal action or ordinance violation of any kind; the nature of the pending charges and the jurisdiction within which charges are filed.
- (b) All parties shall present to the Clerk for examination:
  - 1. 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.
  - 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, dated not more that 90 days prior to the date the application for license is made.
- (c) Individuals and businesses shall appoint the clerk or his/her agent to accept service of process in civil action brought arising out of any sale or service performed in connection with the direct sales activities in the event the individual or business cannot, after

reasonable effort, be served.

(d) Individuals and businesses shall provide the County Clerk with whatever Release of Information form are requested so as to enable the county Clerk and the Sheriff's Department to conduct the investigation required by this Ordinance.

(e) Upon payment of the fee and signing of the statement, the Clerk shall register the applicant as a direct seller and date the entry. Such registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in par. (5)(b) below.

(5) *Investigation.*

(a) Upon receipt of each application, the Clerk shall refer it immediately to the Sheriff's Department which shall make and complete an investigation of the statements made in such registration.

(b) The Clerk shall refuse to register an individual or business if any of the following is documented pursuant to the investigation above that:

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

2. Complaints of a material nature have been received against the applicant by authorities in the County or in any of the last three cities, villages, towns or counties in which the applicant conducted similar business.

3. 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.

4. The applicant is subject to a pending criminal charge or ordinance violation charge or the applicant failed to comply with any applicable provision of par. (4)(b) above.

(6) *Appeal.* Any person or business denied registration may appeal through the appeal procedures provided in Ch. 24 of this General Code.

(7) *Regulation of direct sellers.*

(a) *Prohibited practices.*

1. A direct seller shall be prohibited from:

a. Calling at any dwelling or other place between the hours of 9 p.m. and 9 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 or remaining on any premises after being asked to leave by the owner, occupant or other person having apparent authority over such premises.

2. A direct seller or direct seller business shall not misrepresent or make false, deceptive or misleading statements concerning the quality or character of any goods offered for sale, the purpose of his visit, his identity or the identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Such portion shall be expressed as a percentage of the sale price of the goods.

3. No direct seller 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 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 a 100 foot radius of the source.

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

(b) *Disclosure requirements.*

1. After the initial greeting and before any other statement is made to a prospective

customer, a direct seller 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, and shall present, upon request, the permit and identification to any potential customer.

2. If any sale of goods is made by a direct seller or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel such transaction if it involves the extension of credit of more than \$25.00 or it is a cash transaction and the cancellation shall be in accordance with the procedure as set forth in Wisconsin Statutes, Chapter 423. 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 Wisconsin Statutes, Chapter 423, or its successor statutes.
  3. If the direct seller takes a sales order for the later delivery of goods, he 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.
- (c) **Bond.** A direct seller shall post either a cash bond in lawful currency of the United States or certified check or a corporate surety bond in the amount required by par. (d) below with the Clerk at the same time the registration form is filed with the Clerk. The direct seller shall name all persons upon whose behalf the bond shall be posted. Buyers or donees who wish to cancel their transactions or claim a refund as permitted in subpar. (b)2. above may do so by presenting within the time limits in subpar. (b)2. to the Clerk the goods purchased or the credit papers. If a cash bond is posted, the Clerk shall refund to the donee or buyer the amount paid to the seller. The clerk shall deduct from the bond any amounts so refunded plus \$25.00 for each refund made as a handling charge. If a corporate surety bond is posted, the Clerk shall notify seller in writing demanding payment within seven days plus the \$25.00 service charge. If payment is not forthcoming, the Clerk shall file a claim against the corporate surety bond in such amount. The Clerk shall forward the refund to the buyer upon receipt of payment from either the seller or corporate surety bond. The clerk shall store the goods and papers upon which the refund was grounded and 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 goods and papers, crediting any money received therefor to seller's bond account. Once the bond has been depleted below 75 percent of its original amount, direct seller shall upon written notice thereof by first class mail within ten days after mailing of such notice replenish the bond or forfeit the registration. No direct seller shall conduct activities within the County after 48 hours have expired since the mailing of such notice until such time as the fund is replenished unless the registration is revoked, in which case no further sales shall take place. The bond will be returned or canceled 30 days after expiration of the license.
- (d) **Bond Schedule.** The amount of the bond required in par. (c) shall be determined by the highest price of any individual item to be sold by direct seller in accordance with the following schedule.

<i>Price of Goods</i>	<i>Bond Required</i>
Less than \$1.00	\$1,000.00
\$10.00-\$9.99	2,500.00
\$10.00-\$99.99	5,000.00
\$100.00-\$250.00	7,500.00
In excess of \$250.00	10,000.00

- (8) **Records.** The County Sheriff's Department shall report to the Clerk all convictions for violation

of this section and the Clerk shall note any such violation on the record of the registrant convicted.

- (9) *Revocation of registration.*
  - (a) Registration may be revoked by the County Clerk 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 section 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.
  - (b) Written notice of the revocation hearing shall be served personally or by mail or by publication 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.
- (10) *Possession / display of license.* Direct sellers shall at all times when engaging in direct sales activities, have on their person and visibly display the permit issued pursuant to this section, as well as the photo identification presented to the County Clerk at the time of registration.
- (11) *Enforcement.* The Office of Corporation Counsel's is authorized to commence any and all proceedings necessary for the enforcement of this section.
- (12) *Penalty.* Any person or business violating any term of provision of the Ordinance shall be subject to a forfeiture of not less than \$100.00 nor more than \$500.00 for a first offense and not less that \$500.00 nor mor than \$1,000.00 for a second or subsequent offense. (O-32-97)