

**Title 2 Chapter 5
Town of Lake Mills Regulation of Direct Sellers Ordinance**

Title 2 Chapter 5

Regulation of Direct Sellers, Transient Merchants, and Solicitors

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2-5-1: Short Title

This chapter shall be known and may be cited as “REGULATION OF DIRECT SELLERS”.

2-5-2: Purpose

The purpose of this chapter is to establish a procedure for regulating and licensing of direct sellers, transient merchants, and solicitors as the terms are defined in this chapter. It is not the intent of this chapter to regulate speech or other forms of conduct protected by either the first amendment to the United States constitution or by the Wisconsin constitution. The permitting process established by this chapter is intended to be content neutral and not subject matter based.

2-5-3: Authority and Findings

The town board hereby finds and determines as follows:

- A. The Town of Lake Mills has been granted Village powers by the electorate under Wisconsin Statutes Chapter 61.34(1) and is therefore authorized to license and regulate direct sellers, transient merchants, and solicitors within the Town pursuant to Title 2, Chapter 5 Town of Lake Mill’s Ordinances.
- B. Direct sellers, as defined in this chapter, contribute to the individual, social, economic and environmental health and wellbeing of the community.

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- C. Direct sellers, however, create special regulatory issues including, but not limited to, the need for times of selling.
- D. Wisconsin State Statute section 103.34 (Malinda's Law) took effect April 1 2010 for the protection and safety of consumers, homeowners, and the employees of Traveling Sales Companies typically called "Traveling Sales Crews".

2-5-4: Definitions

As used in this chapter the following words and terms have the following meanings, unless the context clearly requires otherwise:

Direct Seller: Any individual who, for himself or for a partnership, association or corporation, sells goods 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.

Transient Merchant: Any person, whether as owner, agent, consignee or employee, who engages in a temporary business or selling and delivering goods, wares, and merchandise within the Town and who, in furtherance of such purpose, hires, leases, uses, or occupies any building, structure, motor vehicle, trailer, tent, railroad box car, or boat, public room in a hotel, lodging house, apartment, shop 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.

Permanent Merchant: A direct seller or one representing a merchant who, for at least one year prior to the submission of an application pursuant established place of business in the Town or has continuously resided in the Town and now does business from their residence.

Goods: Personal property of any kind and includes goods provided incidental to services offered or sold

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

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

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Applicant: Each individual applying for registration and licensing as a direct seller, transient merchant, or solicitor

Registrant: Each individual registered by the Town Clerk

Traveling Sales Crew: As defined by the Wisconsin Department of Workforce Development; Is two (2) or more individuals who are employed as salespersons or in related support work who travel together in a group, and who are absent from their permanent place of residence for the purpose of selling consumer goods or services to consumers from house to house on any street or in any other place that is open to the public.

2-5-5: Permit Required

- A. It shall be unlawful for any direct seller, transient merchant, or solicitor to engage in direct sales or solicitations within the Town of Lake Mills without being registered and licensed for that purpose, as provided herein.
- B. State Statute 103.34 (Malinda's Law) requires businesses using Traveling Sales Crews to register with the Department of Workforce Development (DWD).

2-5-6: Exemptions

The following shall be exempt from all provisions of this section:

- A. Any person delivering products or services to regular customers on established routes.
- B. Any person selling goods at wholesale to dealers in such goods.
- C. Any farmer or gardener selling agricultural products from their farm or garden.
- 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 the county and who delivers such goods in his 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 and in which the buyer has initiated contact with and specifically requested a home visit by said person.
- F. Any person holding sale required by Statute or by order of any court and any person conducting a bona fide auction sale pursuant to law.
- G. Any local youth organization soliciting funds for club activities. “
- H. Charitable organizations registered with the Wisconsin Department of Regulation and Licensing, pursuant to S.S. 440.41, Wis. Stats., and/or tax exempt status, pursuant to s.s. 501(c)(3) of the United States Internal Revenue Code, shall be exempt from the requirements set forth in subs. (4)(a) and (c) and (6) below if the organization has provided the individual representing it with credentials stating:
 - 1. Name, address, and contact person of the organization.
 - 2. Name of all individuals or representatives who will be selling or soliciting.
 - 3. Purpose of the solicitation.
 - 4. Provided, further, that said individuals complete an application available from the Clerk.
 - 5. A license operative for the dates provided to the Clerk shall be issued without charge upon compliance with the foregoing.

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- I. Any veteran who holds a special State license, pursuant to S.S. 440.51, Wis. Stats., shall be exempt from the provisions of subs. (4) and (6) below, provided that such veteran provides the 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.
 - 4. Valid veteran identification.
- J. The Clerk shall then confirm Veteran status or deny the same and shall present determination to the Board at the next Town Board Meeting.

2-5-7: Registration Requirements and Fee

- A. Applicants for licenses must complete and return to the Clerk a registration form furnished by the Clerk.
- B. State Statute 103.34 (Malinda's Law) requires businesses using Traveling Sales Crews to register with the DWD. Said registration has specific requirements of the sales company (employer) and each of the salespersons (employees). Documents issued by DWD shall be presented to the Town Clerk.
- C. Applicants shall present the following items to the Clerk for examination:
 - 1. A driver's license or some other proof of identity as may be reasonably required.
 - 2. A physician'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.
- D. No application shall be processed until the application fee as numerated in the Town of Lake Mills Fees, Deposits and Bonds schedule has been paid to the Clerk to cover the cost of processing said application.

2-5-8: Investigation; Denial of Application

- A. Upon receipt of a completed registration form, the Town Clerk shall immediately refer it to the Chief of Police, or a designee, who shall complete the investigation and file a report with the Town Clerk within 72 hours.
- B. The Town Clerk shall refuse to issue a license to the applicant for any of the follow:
 - 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 5 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 sub. (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 Chief of Police shall endorse on said application disapproval and reasons for the same and return the application to the Town Clerk, who shall notify the applicant that the application was not approved and no license will be issued.

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5. If the applicant can not provide proof of registration with the Wisconsin Department of Workforce Development.
- 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, the clerk shall issue the license or provide the applicant with written notice of denial within 72 hours of filing.
- 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.

2-5-9: Registration and Issuance of License

- A. Upon compliance with the foregoing requirements and filing of a bond, if applicable, the Town Clerk shall register the applicant as a direct seller, transient merchant, or solicitor and issue a license to the applicant within 7 business days. The Clerk shall then forward the information and notice of the issuance of a license to the Chief of Police. The license shall be operative for 90 consecutive days from the date of issuance. License may be extended upon Town Board approval.
- 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. A registrant shall exhibit their solicitor's license at the request of any citizen or police officer.
- D. Every applicant who intends to take sales orders and down payments for the later delivery of goods and services and represents a business or organization whose principal place of business is located outside the State, shall file with the Town Clerk a surety bond, in the amount of \$10,000.00 issued to the Town of Lake Mills, for a term of one year from the date of issuance of the license and, conditioned that the applicant comply with all applicable ordinances of the Town and Statutes of the State regulating peddlers, canvassers, solicitors, and transient merchants. Such bond shall guarantee to any citizen of the Town that all money paid as a down payment shall be accounted for and applied according to the representations of the seller and that the products or services purchased shall be delivered according to the representations of the seller. Action on such bond may be brought by the person aggrieved and for whose benefit, among others, the bond is given. The surety may, pursuant to a court order, pay the face amount of the bond to the Clerk of Courts in which suit is commenced and be relieved of all further liability.

2-5-10: Regulation of Direct Sellers, Solicitors and Transient Merchants

- A. Prohibited Practices.
 1. A direct seller or solicitor shall be prohibited from:

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- i. Calling at any dwelling or other place between the hours of 7:00 p.m. and 9:00 a.m. except by appointment.
 - ii. Calling at any dwelling on Sundays and legal holidays.
 - iii. Calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning.
 - iv. Calling at the rear door of any dwelling place.
 - v. 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 their visit, their identity, or the identity of the organization they represent.
 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 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 100 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 they are conducting business or making solicitations.

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 provide their name, the name of the company or organization affiliated with, if any, and current Town license, and the identity of goods or services offered for sale.
2. If any sale of goods or services is made by a direct seller or any sales order for the later delivery of goods or services 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 \$25.00, in accordance with the procedure as set forth in Section 423.203 et al. Wis. Stats.; the seller shall give the buyer 2 copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Section 423.203 (1) (a), (b), (c), (2), and (3), Wis. Stats.
3. If the direct seller takes a sales order for the later delivery of goods, they 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; and the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

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2-5-11: Records of Violations

The Chief of Police shall report to the Town Clerk all convictions for violation of this chapter and the Town Clerk shall note any such violation on the record of the registrant convicted. The Town Clerk shall note any complaint or report of an alleged violation made by a resident of the Town of Lake Mills or a police officer.

2-5-12: Revocation of License

- A. The registrant's license may be revoked by the Town Board 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 direct sales or solicitation, violated any provision of this chapter 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 or solicitations.
- B. Written notice of the hearing shall be served personally on the registrant at least 72 hours prior to the time set for the hearing. Such notice shall contain the time and place of the hearing and a statement of the acts or omissions upon which the hearing will be based

2-5-13: Severability

The provisions of this ordinance shall be deemed severable, and it is expressly declared that the Town Board of the Town of Lake Mills would have passed the other provisions of this ordinance irrespective of whether or not one or more provisions may be declared invalid. If any provision of this ordinance or the application of any person or circumstances is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected.

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2-5-14: Adoption and Amendments

This ordinance shall be in full force and effect from its date of adoption and publication as provided by law

- A. Adopted 08/15/2012
- B. Amended 03/10/2015

Amended this 10th day of March, 2015.

Attest: _____
Sarah FitzGibbon, Town Clerk

Hope Oostdik, Chairperson

David Schroeder, Supervisor I

James Colegrove, Supervisor II

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Application

TOWN OF LAKE MILLS-# _____
REGISTRATION FOR DIRECT SELLERS,
TRANSIENT MERCHANTS, AND SOLICITORS

(Each direct seller, transient merchant or solicitor needs to file a separate application)

Date of application: _____ to what date is permission requested? _____

Applicants Name: Last _____ First _____

MI _____

Previous Name(s): within the last 5 yrs. _____

Name of Business/Organization (if different) _____

Contact at Business/ Applicants Supervisor: _____

Address of Applicant/Business:

Nature of Goods or Services Offered:

Phone #: _(____) _____ Business/Org Phone: _(____) _____

Cell Phone: _(____) _____ Fax: _(____) _____

Driver's Lic. #: _____ State: _____ Date of Birth: ____/____/____

Municipalities in which applicant has engaged in vending during past five years:

1. Name of Municipality/County: _____

Address: _____

2. Name of Municipality/County: _____

Address: _____

3. Name of Municipality/County: _____

Address: _____

Name of Person(s) in Charge or be (present) during sale: (each individual needs to complete application) _____

Date and Times requested for vending: _____

Location of place to be vending: _____

Method of sales: _____

Area of Solicitations: _____

Type of Goods to be sold:

Vehicle Descriptions, License plates, and number of vehicles to be used while vending:

Make: _____ Model: _____ Color: _____ Year: _____ Lic. Plate #: _____

State: _____ Other: _____

Are you the registered owner of the described vehicle? Yes No (circle one)

If no, who is the registered owner of the vehicle: _____

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Do you/your business hold a physician's certificate? Yes No (circle one)

List at least 3 business associates or referrals from customers or lenders. Supply name and phone number.

1. _____
2. _____
3. _____

Have you or any of your employees ever been convicted of a crime or violated any law or ordinance where the penalty was a forfeiture?

If yes, list date of conviction, law violated and penalty imposed: _____

Proof of registration with the Wisconsin Department of Workforce Development (DWD)?
Yes No (circle one)

PLEASE READ THE ATTACHED COPY OF THE TOWN OF LAKE MILLS ORDINANCE IN ITS ENTIRETY.

Non-Refundable Application fee: Refer to the Towns Fees, Bonds, and Deposits document (make checks payable to Town of Lake Mills)

AS PETITIONER, I UNDERSTAND AND WILL ABIDE BY THE REQUIREMENTS, RESTRICTIONS, AND EXEMPTIONS SET FORTH BY THE TOWN OF LAKE MILLS ORDINANCE 2-5 et al. I, the applicant, understand and agree to payment of required fees:

Signature

Date

.....
Office use

Payment Info: _____ Application received by: _____

Reference/Background Checks

Completed _____ Approved _____ Denied _____

Reasons _____

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License

DIRECT SELLERS, TRANSIENT MERCHANT AND SOLICITORS
LICENSE of REGISTRATION

20____ - ____

Town of Lake Mills,
Jefferson County

Applicant, _____, having filed with the undersigned town clerk an application for Direct Sellers, Transient Merchant and Solicitors License to engage in the direct sale or solicitations within the Town of Lake Mills pursuant Town Ordinance 2-5.

Address of applicant: _____

Type of Goods Sold: _____

Vehicle Make and License #: _____

1. Applicant has filed a surety bond, registered with the town clerk
2. All background checks have been completed and paid. ____ (clerk initial)
3. This license is operative for _____ days from the date of issuance and is not transferable to any other individual (s) or business (es).
4. This license must be presented to any citizen or police officer requesting proof of registration.
5. Said applicant confirms that they understand and will abide by the regulations set forth in Town Ordinance 2-5 et al. and they understand that violations will result in revocation of said license and/or penalties.
6. Said applicant confirms that they understand and will abide by the regulations set forth in State Statute 103.34 and they understand that violations will result in revocation of said license and/or penalties

Applicant's signature _____ Date _____

Attest: Town Clerk: _____

Date of issuance: _____

This license expires on: _____