

CHAPTER 5

CANVASSERS, PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS, AND ITINERANT VENDORS

3-5-1: Definitions: For the purpose of this Chapter, the following words as used herein shall be construed to have the meaning herein ascribed thereto, to wit:

Canvassers: Persons conducting any manner of door-to-door advocacy, including but not limited to those conducting any type of surveys and/or the distribution of any literature, handbills or pamphlets, but excluding those present as a result of a prior invitation from an owner or occupant of the premises, any persons employed and on official business for the United States Census Bureau, and also excluding those rendering assistance or providing information of a bona fide emergency nature.

Peddling: Selling or offering for sale, barter or exchange at retail any goods, wares, merchandise or services of any kind whatsoever by traveling from place to place along the streets of the Village or from residence to residence therein, but shall not include solicitation or canvassing for orders for future delivery. "Peddling" may, in some instances, include the activities of an "itinerant vendor" or "transient merchant", as defined herein. If a peddler is also an itinerant vendor or transient merchant as defined herein, then those provisions shall also be applicable. To the extent that the provisions of this Chapter relative to peddling are inconsistent with those relating to itinerant vendors and/or transient merchants, the more restrictive provisions shall apply.

Residence: Shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

Soliciting: Shall mean and include any one or more of the following activities:

- (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, insurance, services of any kind, character or description whatever, for any kind of consideration whatever, all for future delivery; or
- (2) Any person who is seventeen (17) years of age or older seeking to obtain gifts or contributions of money, clothing or any other valuable thing for the support or benefit of any charitable or nonprofit association, organization, corporation, or project; or
- (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and other publications shall not be deemed "soliciting" and such activities are not intended to be regulated by this Chapter.

Transient merchant: Any person who is engaged temporarily in the retail sale of goods, wares or merchandise in this village and who, for the purpose of conducting such business, occupies any building, room, vehicle, structure of any kind, or vacant lot, provided, however, this term does not include any person selling goods, wares or merchandise which

are raised, produced or manufactured by him, to any person selling vegetables, fruit or perishable farm products at an established village market, to any person operating a store or refreshment stand at a resort, or to any person operating a stand or booth on or adjacent to property owned by him or upon which he resides. A minor under the age of seventeen (17) who is fundraising for an athletic, civic, or social organization, in which the same minor actively participates, is excluded from the definition.

Itinerant vendor: Any person who transports products or tangible personal property for sale within this village who does not maintain in this Village an established office, distribution house, sales house, warehouse, service center or residence from which such business is conducted or uses a vehicle for the vending and sale of products or tangible personal property for sale, provided, however, this term shall not include any person who delivers tangible personal property within this village who is fulfilling an order for such property which was solicited or placed by means other than in-person soliciting. A minor under the age of seventeen (17) who is fundraising for an athletic, civic, or social organization, in which the same minor actively participates, is excluded from this definition.

Registered transient merchant and registered itinerant vendor: Any person who is a transient merchant or itinerant vendor as defined above and who has obtained and has in his possession a valid certificate of registration as hereinafter.

Vehicle: Vehicle shall mean motor vehicles or devices moved by human power which are not more than fifty (50) inches in height at its highest point from the ground, not more than fifty-four (54) inches in width at its widest point, and not more than nine and one-half feet (92") in length at its longest point."

3-5-2: Certificate of registration required for transient merchants and itinerant vendors; restriction.

A. It shall be unlawful for any person to engage in business as a transient merchant or itinerant vendor, or to use a vehicle for the vending and sale of products upon the Village streets, without first having obtained a Certificate of Registration as hereinafter provided.

B. Selling by a registered transient merchant or itinerant vendor is prohibited any time other than Saturdays (which do not fall on state-recognized holidays) between the hours of 10 a.m. and 4 p.m.

C. A certificate of registration as hereinafter provided shall be secured by every person desiring to engage in retail sales within this village as a transient merchant or itinerant vendor, as defined herein.

D. Each person shall at all times while acting as an itinerant vendor or transient merchant in the Village, carry upon his person, or vehicle, the certificate of registration and the same shall be exhibited by such registrant whenever he is requested to do so by any police officer or by any person solicited.

3-5-3: Application for Certificate of Registration for Transient Merchants and Itinerant Vendors; Content; Photographing of Applicant; Records of Applications; Circumstances Under Which Certificate Will Not Issue; Fee For Registration:

A. Application for a certificate of registration shall be made upon a form provided by the Village Clerk and filed with such Village Clerk, who shall forward such application to the Village President for his or her review pursuant to this Chapter. The applicant shall truthfully state in full the following information requested on the application:

1. Name and present residence address and length of residence at such address; applicable business address if other than residence address which must include street address; social security number; driver's license number, if any;
2. Residence addresses, if any, during the past three (3) years if other than present address;
3. Physical description of the applicant, including height, weight, color of hair, and color of eyes;
4. Name and address of the person, firm or corporation or association whom the applicant is employed by or represents; and the length of time of such employment or representation; residence address of corporate officers and principal;
5. Location at which applicant intends to do business; nature of the business; whether a certificate of registration under the Retailers' Occupation Tax Act has been issued; a list of inventory the applicant intends to offer for sale;
6. The nature of the products or services he is seeking to sell or lease;
7. The names and addresses of the manufacturers of such products, or of the organization which he is representing;
8. The proposed method of operation in the Village and the duration or period of time that he intends to engage in sales as a transient merchant or itinerant vendor.
9. Name and address of all employers during the past three (3) years if other than the present employer;
10. Description sufficient for identification of the subject matter of the soliciting which the applicant will engage in;
11. Period of time for which the certificate is applied for;
12. A list of all licenses to conduct business as "transient merchant" or "itinerant vendor" received or applied for within this State for preceding twelve (12) months;
13. The date, or approximate date, of the latest previous application for certificate in this village, if any;
14. Whether or not a certificate of registration issued to the applicant under this Chapter has ever been revoked;

15. Has the applicant ever been convicted of a violation of any of the provisions of this Chapter or the ordinances of any other Illinois municipality;

16. Has the applicant ever been convicted of a felony under the laws of the State of Illinois or any other state or federal law of the United States;

B. All statements made by the applicant upon the application or in connection therewith shall be under sworn to before a notary public.

C. In connection with the application for a certificate, the applicant shall submit to identification photographing.

D. Each applicant shall also apply to the Office of the Sheriff of McHenry County for a certified copy of his or her personal criminal history, and such applicant shall provide such information and fees to the Sheriff as required by the Sheriff to obtain such certified copy, and the applicant shall further request that the Sheriff also directly provide to the Village for review by the Chief of Police or Village President a certified copy of the applicant's personal criminal history prior to the approval of such certificate for such applicant. If the Sheriff of McHenry County is not able to or will not provide a certified copy of an applicant's personal criminal history to the Village, then the Chief of Police or his designee shall obtain such personal criminal history at a fee determined by him to defray the cost of same.

E. The Village Clerk shall cause to be kept in his or her office an accurate record of every application received and acted upon by the Village President together with all other information and data pertaining thereto and all certificates of registration issued under the provisions of this Chapter, and of the denial of applications. Applications for certificates shall be numbered in consecutive order as filed, and every certificate issued, any renewal thereof, shall be identified with the duplicate number of the application upon which it was issued.

F. The applicant shall pay a fee upon application for a certificate of registration of \$50 per year. The Village Board may in their reasonable discretion waive the application fee upon written request by the applicant.

G. Upon the filing of a complete and accurate application, as provided herein, a certificate of registration shall be issued by the Village President or his other designate within thirty (30) days of application, except that no certificate shall be issued to any person who has been convicted of the commission of a felony under the laws of the State of Illinois or any other state or federal law of the United States, within five (5) years of the date of the application; nor to any person who has committed a violation of any ordinance of this Village nor to any person whose certificate of registration issued hereunder has previously been revoked as herein provided.

H. Nothing in this Chapter shall be interpreted or enforced to deprive any person of any rights guaranteed under the constitutions of the State of Illinois or the United States.

I. The provisions of this Chapter shall not apply to officers of employees of the Village, County, State or Federal Government, or any subdivision thereof, when on official business.

3-5-4: Itinerant Vendors and Transient Merchants: The applicant for an itinerant vendor's or Transient merchant's certificate of registration shall pay a fee upon application for a certificate of registration of \$10.00 per person and \$50.00 for each vehicle utilized or to be utilized in the Village. The Village President or his or her designate shall determine, based upon the application submitted, whether the applicant under this Chapter is a transient merchant or itinerant vendor. It shall be prima facie evidence that a person is a transient merchant or itinerant vendor if the person does not transact business from a fixed location or if the person does not own, or lease for a term of at least six (6) months, the property from which business is conducted. A certificate of registration shall be issued to any qualified applicant upon the posting of the appropriate bond or cash deposit as follows:

A. A license issued under this Section shall expire on December 31 of the year it was issued.

B. If any person makes retail sales as a transient merchant or itinerant vendor without having obtained a certificate of registration under this Section, the police department serving the Village may hold the inventory, truck or other personal property of the person until he obtains a certificate of registration to conduct business as a transient merchant or itinerant vendor. If the property has been held by the police department serving the Village for more than 60 days and the person whose property is being held has not obtained a certificate of registration under this Section, the Village may petition the circuit court for an order for the sale of the property being held. If the court finds that the person whose property is held has not obtained a certificate of registration under this Section, the court may order the Village of Holiday Hills to sell the property. Proceeds of the sale of the property, less reimbursement to the Village of the reasonable expenses of storage and sale of the property, shall become the property of the Village and shall be deposited with Village Treasurer.

C. It is a violation of this Section for any person, firm or corporation, either as principal or agent, to conduct business as a transient merchant or itinerant vendor in this Village without first:

- (1) complying with the requirements of the Retailers' Occupation Tax Act; and
- (2) obtaining a certificate of registration as required under this Section.

3-5-5: Revocation of Certificate:

A. Any certificate of registration issued hereunder shall be revoked by the Village President or the Chief of Police if the holder of the certificate has committed a violation of any of the provisions of this Chapter, or has made a false material statement in the application, or otherwise becomes disqualified for the issuance of a certificate of registration under the terms of this Chapter.

B. Immediately upon such revocation written notice thereof shall be given by the Village President or the Chief of Police to the holder of the certificate in person or by certified U.S. mail addressed to his or her residence address set forth in the application.

C. Immediately upon the giving of such notice the certificate of registration shall become null and void.

3-5-6: Trespassing by canvassers, solicitors or peddlers and others:

A. It shall be unlawful for any person to enter upon any property of another in this municipality after receiving, immediately prior to such entry, notice from the owner or occupant that such entry is forbidden, or to remain upon the property of another after receiving notice from the owner or occupant to depart.

B. A person shall be deemed to have received notice from the owner or occupant within the meaning of this section if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted at the main entrance to said property or the forbidden part thereof.

C. The owner or occupant of any residence who desires to forbid trespasses by canvassers, solicitors or peddlers may attach or exhibit upon or near the main front door, and the main rear or side door (if any, and if to be so protected), a card or plaque stating such of the following as may be appropriate, in letters at least one third (1/3) inch in height: "Canvassers, Solicitors and Peddlers Forbidden"

D. The form of card provided for in this section shall not be deemed to be an exclusive form of notice.

3-5-7: A canvasser, peddler, and/or solicitor is deemed guilty of remaining on property after receiving notice to depart where notice is given in compliance with this Chapter. Notice not to prevent access where peddler or solicitor has received prior invitation from owner or occupant.

A. Any person canvassing, soliciting or peddling who is forbidden entry by notice given in compliance with this Chapter shall be deemed guilty of remaining on the property after receiving notice to depart if he shall ring the doorbell or knock or create any sound calculated to attract the attention of the occupant.

B. Notices exhibited pursuant to this Chapter shall not be deemed applicable to and shall not prevent access to residential property by a canvasser, solicitor or peddler who has received prior invitation, written or oral, from the owner or occupant thereof.

3-5-8: Penalties:

A. Any person, firm or corporation who shall be found guilty by a court of competent jurisdiction of violating any provision of this Chapter or of failing to comply with any requirement thereof, or of violating any permit, any approval, or any directive issued under the provisions of this Chapter shall be guilty of a petty offense, punishable by a fine of not

less than Fifty Dollars (\$50.00) and of not more than Seven Hundred Fifty Dollars (\$750.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues or each solicitation of a separate person.

B. Any person, firm or corporation who shall be found guilty by a court of competent jurisdiction of violating a provision of this Chapter or of failing to comply with any requirement thereof, or of violating any permit, any approval, or any directive issued under the provisions of this Chapter shall, in addition to the fines provided, be obligated to reimburse the Village for its Court costs, court reporter costs, and expert witness fees, and all other out-of-pocket costs incurred by the Village in the prosecution of the said violation or violations.

C. The Village may make application to the Circuit Court for an injunction requiring conformance with this Chapter make such other order as the Court deems necessary to secure compliance with this Chapter.