

ORDINANCE NO. 18-2018

**AN ORDINANCE PROVIDING FOR THE
REGISTRATION AND REGULATION OF DIRECT SELLERS AND
AMENDING §111.055 ET SEQ. OF THE PLAINFIELD TOWN CODE**

WHEREAS, the regulation of Direct Sellers is now regulated by §§ 111.055 through 111.082 of the Plainfield Town Code.

WHEREAS, the Town now desires to amend and replace §§ 111.005 through 111.082 of the Plainfield Town Code.

NOW THEREFORE, BE IT ORDAINED by the Town Council, Town of Plainfield, Indiana that §§ 111.055 through 111.082 of the Plainfield Town Code is amended as follows:

DIRECT SELLER REGULATIONS

§ 111.055 REGISTRATION REQUIRED.

It shall be unlawful for any direct seller to engage in direct sales within the town without being registered for that purpose as provided herein.

(1991 Draft Code, § 4-37) (Ord. 3-85, passed 2-25-1985) Penalty, see § 111.999

Statutory reference:

Regulation of the operation of businesses, crafts, professions and occupations, see I.C. 36-8-2-10

§ 111.056 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CHARITABLE ORGANIZATION. Includes any benevolent, philanthropic, or patriotic, partnership, association or corporation, or one purporting to be such.

DIRECT SELLER. Any individual who, for himself or herself, 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 said 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.

GOODS. Includes personal property of any kind, and shall include goods provided incidental to services offered or sold.

PERMANENT MERCHANT. A direct seller who, for at least one year prior to the consideration of the application of this subchapter to said merchants, has continuously operated an established place of business in this town or has continuously resided in this town and now does business from his or her residence.

(1991 Draft Code, § 4-38) (Ord. 3-85, passed 2-25-1985)

§ 111.057 EXEMPTIONS.

The following shall be exempt from the licensing provisions of this subchapter:

(A) Any person delivering newspapers, fuel, dairy products 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 products which such person has grown or produced in the county and is being sold by a resident of the county;

(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 town 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, and in which the buyer has initiated contact with, and specifically requested a home visit by said person;

(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; and

(I) Any employee, officer or agent of a charitable organization as defined in § 111.056. (1991 Draft Code, § 4-39) (Ord. 3-85, passed 2-25-1985)

(J) Local Chamber of Commerce seeking additional memberships.

§ 111.058 REGISTRATION.

(A) Applicants for registration must complete and return to the Clerk-Treasurer at least three days before such applicant shall be authorized to do business a registration form furnished by the Clerk-Treasurer which shall require the following information:

(1) Name, permanent address and telephone number, and temporary address, if any;

- (2) Age, height, weight, 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 business will be conducted, if any;
- (5) Nature of business to be conducted and a brief description of the goods offered, and any services offered;
- (6) Proposed method of delivery of goods, if applicable;
- (7) Make, model and license number of any vehicle to be used by applicant in the conduct of his or her business;
- (8) The last three previous cities, villages or towns where applicant conducted similar business;
- (9) Place where applicant can be contacted for at least seven days after leaving the town; and
- (10) 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; the nature of the offense and the place of conviction.

(B) Such application shall be accompanied by a bond in the sum of \$250 executed by a surety company, or by two responsible freeholders residing within the corporate limits of the town or a cash bond of equal amount, said bond conditioned that all goods, wares, merchandise or articles sold by such applicant will be as represented by him or her and that he or she will refund the purchase price of any goods, wares, merchandise or articles sold by him or her which are not as represented. Any person aggrieved by the action of a licensed direct seller hereunder shall have a right of action on the bond or other surety for the recovery of money or damages or both. In the event a cash bond is deposited, the same shall be retained by the town for 60 days after the expiration of any license issued upon said bond or surety.
(1991 Draft Code, § 4-40) (Ord. 3-85, passed 2-25-1985)

§ 111.059 ADDITIONAL INFORMATION.

Each applicant shall present to the Clerk-Treasurer for examination:

- (A) A driver's license or some other proof of identity as may be reasonably required;
- (B) 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; and

(C) 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 than 90 days prior to the date the application for license is made.
(1991 Draft Code, § 4-41) (Ord. 3-85, passed 2-25-1985)

(D) A limited criminal history in accordance with the following requirements:

(a) If the solicitor applicant has been an Indiana resident for 1095 consecutive days immediately preceding the submission date of the application, the limited criminal history shall be obtained from the Indiana State Police at:

Indiana State Police
100 N. Senate, Room 302 Indianapolis, Indiana
(317) 233-5424
<http://www.in.gov/ai/appfiles/isp-lch/>

(b) If the solicitor applicant has not been an Indiana resident for 1095 consecutive days immediately preceding the submission date of the application, the limited criminal history shall be from the state(s) in which said person was a resident during the 1095 days immediately preceding the submission date of the application.

§ 111.060 LICENSE.

(A) At the time the registration and surety are returned and the bond approved by the Clerk-Treasurer, a license shall be issued by the Clerk-Treasurer of the town to such applicant to begin business not less than three days after the date of filing such application and bond, upon payment of a non-refundable license fee in the amount of \$25.00 per person for a thirty (30) day permit.

(B) Upon payment of said fee, the Clerk-Treasurer shall register the applicant as a direct seller and date the entry and issue a thirty (30) days license. If any such licensee desires to continue in business after the expiration of such license, a new license must be secured in the same manner and upon the same terms as the original license, subject to subsequent refusal as (1991 Draft Code, § 4-42) (Ord. 3-85, passed 2-25-1985; Ord. 1-87, passed 6-8-1987)

§ 111.061 INVESTIGATION.

(A) Upon receipt of each application, the Clerk-Treasurer shall refer it immediately to the Chief of Police who may make and complete and investigation of the statements made in such registration.

(B) The original limited criminal history must be attached to the original application and will be submitted to the Chief of Police for review

(C) The Chief of Police or designee will review the application and associated documents and approve or deny the license application within twenty (20) business days of submission. Any application that is not filled out completely shall not be given further consideration.

(D) The Chief of Police shall deny and/or revoke any license and/or identification card if:

- (a) The applicant has had any convictions for a misdemeanor or felony within fifteen (15) years of the date of application for an offense of dishonesty, fraud, theft and/or moral turpitude.
- (b) An application is incomplete, false or intentionally misleading.
- (c) A solicitor is charged with or convicted of a felony or misdemeanor crime before the expiration of the license or identification card.
- (d) A solicitor fails to properly display their identification card while engaged in solicitation.
- (e) Two or more sworn complaints have been made to the Plainfield Police Department regarding allegedly untruthful or illegal conduct concerning the solicitor.
- (f) Failure to follow any of the rules or regulations or items outlined in this ordinance,

All licenses and/or identification card denials or revocations shall be in writing and include the date and reason for denial and/or revocation.

The Limited Criminal History provided shall be valid six (6) months from issue.

(E) The Clerk-Treasurer shall refuse to register the applicant if it is determined pursuant to the investigation above that: the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received and proven against the applicant by authorities in the three previous cities, villages and towns, in which the applicant conducted similar business; 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 the applicant failed to comply with any applicable provision of § 111.058.

(1991 Draft Code, § 4-43)

§ 111.062 APPEAL.

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the Town Council.
(1991 Draft Code, § 4-44) (Ord. 3-85, passed 2-25-1985)

§ 111.063 REGULATIONS.

The following regulations shall govern the conduct of registrants hereunder.

(A) It shall be unlawful for any direct seller to call at any dwelling or other place between the hours of 7:00 p.m. and 9:00 a.m. except by appointment; to call at any dwelling or other place where a sign is displayed bearing the words "No Peddlers", "No Solicitors" or words of similar meaning; to call at the rear door of any dwelling place; or to remain on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

(B) It shall be unlawful for a direct seller to misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his or her visit, his or her identity or the identity of the organization he or she 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. Said portion shall be expressed as a percentage of the sale price of the goods.

(C) It shall be unlawful for any direct seller to impede the free use of sidewalks, streets and highways by pedestrians and vehicles or to create a public safety issue as a result of the manner the direct seller is using to promote or sale. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

(D) It shall be unlawful for any direct seller to 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.

(E) It shall be unlawful for any direct seller to allow rubbish or litter to accumulate in or around the area in which he or she is conducting business.
(1991 Draft Code, § 4-45) (Ord. 3-85, passed 2-25-1985) Penalty, see § 111.999

§ 111.064 DISCLOSURE REQUIREMENTS.

The following requirements shall govern the conduct of registrants.

(A) After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his or her name, the name of the company or

organization he or she is affiliated with, if any, and the identity of goods or services he or she offers to sell.

(B) 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 said transaction if it involves the extension of credit or is a cash transaction of more than \$25.

(C) If the direct seller takes a sales order for the later delivery of goods, he or 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.
(1991 Draft Code, § 4-46) (Ord. 3-85, passed 2-25-1985) Penalty, see § 111.999

§ 111.065 RECORDS.

The Chief of Police shall report to the Clerk-Treasurer all convictions for violation of this subchapter and the Clerk-Treasurer shall note any such violation on the record of the registrant convicted.
(1991 Draft Code, § 4-47) (Ord. 3-85, passed 2-25-1985)

§ 111.066 REVOCATION OF REGISTRATION.

The registration of a direct seller may be revoked by the Town Council for any violation of this subchapter.
(1991 Draft Code, § 4-48) (Ord. 3-85, passed 2-25-1985)

[SIGNATURES ON NEXT PAGE]

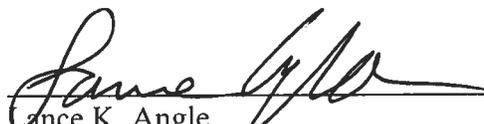
PASSED AND ADOPTED by the Town Council of the Town of Plainfield, Indiana, on this 23rd day of July, 2018.

TOWN COUNCIL, TOWN OF PLAINFIELD,
HENDRICKS COUNTY, INDIANA

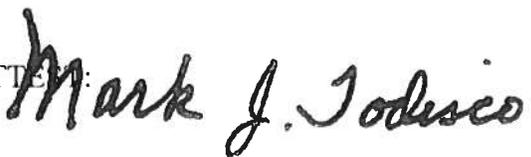

Robin G. Brandgard, President


Bill Kirchoff, Vice President


Kent McPhail


Lance K. Angle


Dan Bridget

ATTEN: 

Mark Todisco, Clerk-Treasurer
Town of Plainfield, Indiana