Cumberland Town Council

Ordinance 2018-20

Ordinance Requiring the Registration of and Regulating Direct Sellers

Whereas, numerous individuals and groups seek to solicit or otherwise directly sell goods at various locations in the Town of Cumberland, other than the location of the person’s or group’s designated place of business; and

Whereas, these individuals and groups from time to time desire to solicit their goods by going door-to-door in both residential and business areas; and

Whereas, for the safety, health, and welfare of the residents of the Town of Cumberland, and in order to facilitate the investigation of and resolution of complaints by citizens and to prohibit certain behavior of direct sellers which are deemed detrimental to the citizens of the Town, the Cumberland Town Council finds that direct sellers should be registered with the Town prior to conducting business in the Town; and

Whereas, the Town Council finds that direct sellers must register with the Town by completing a registration form at the office of the Cumberland Town Manager; and

Whereas, upon registration, the direct seller must abide by the conduct regulations detailed by this ordinance; and

Whereas, the Town Council finds that it is in the best interest of the Town, and its citizens, to amend section 00-11-110 of the Town of Cumberland Code of Ordinances.

Therefore, it is ordained that section 00-11-110 of the Town of Cumberland Code of Ordinances is hereby amended and the amended section will read in accordance with Exhibit A.

It is further ordained that any other section of the Town Code that is not specifically amended by this ordinance shall remain in full force and effect.

It is further ordained that this ordinance shall become effective upon adoption.

Adopted this 5th day of September, 2018.
Cumberland Town Council:

Anna Pea, President

Joe Siefker, Vice President

Brian Gritter, Member

Nicole Bell, Member

Aaron Cutshaw, Member

Attest:

Erica Salmon, Clerk-Treasurer
“CHAPTER 110: DIRECT SELLERS

Section

11-110-01 Definitions
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§ 00-11-110-01 DEFINITIONS

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

(A) CHARITABLE ORGANIZATION. Any not-for-profit corporation or benevolent or philanthropic organization whose purpose is to promote education, religion or other philanthropic interests.

(B) DIRECT SELLER. Any individual who, individually, 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 the 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.

(C) GOODS. Personal property of any kind, including goods provided incidental to services offered or sold.

(D) PERMANENT MERCHANT. A direct seller who, for at least one year prior to the consideration of the application of this article to the 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 residence.

§ 00-11-110-02 EXEMPTIONS

The following shall be exempt from all provisions of this article:
(A) Any person delivering newspapers, fuel, dairy products or bakery goods to
and at the request of regular customers on established routes;

(B) Any person selling goods at wholesale to dealers in the goods;

(C) Any person selling agriculture products which the person has grown or
produced in the town and is being sold by a resident of the town;

(D) Any permanent merchant or employee thereof who takes orders away from
the established place of business for goods regularly offered for sale by the merchant
within the town and who delivers the 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 the person;

(F) Any person who has had, or one who represents a company which has, a
prior business transaction, such as a prior sale of credit arrangement, with the
prospective customer;

(G) Any person selling or offering for sale a service unconnected with the 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; or

(I) Any employee, officer or agent of a charitable organization which has secured
a permit as provided for elsewhere in this code.

§ 00-11-110-03 REGISTRATION REQUIREMENTS

(A) Applicants must complete and return to the Town of Cumberland Town
Manager’s Office, during the hours of 8 a.m. to 4 p.m. Monday through Friday, at least
three days before the applicant shall be authorized to do business, a registration form
furnished by the Town which shall require the following information:

(1) Name, permanent address, 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
and any services offered;

(6) Make, model and license number of any vehicle to be used by the
applicant in the conduct of his business;
(7) The last three previous cities, counties, or towns where the applicant conducted similar business;

(8) Place where applicant can be contacted for at least seven days after leaving the town; and

(9) Statement as to whether applicant has been convicted of any crime or ordinance violation related to the applicant's transient merchant business within the last five years, the nature of the offense and the place of conviction.

(B) Any person, firm or corporation who violates any provision of this article for which another penalty is not specifically provided shall, upon conviction, be subject to a fine in the amount of $500. Separate offense shall be deemed committed upon each day during which a violation occurs or continues.

§ 00-11-110-04 ADDITIONAL INFORMATION REQUIRED

Each applicant shall present to the Cumberland Town Manager's Office for examination:

(A) A photographic identification card, which can be a driver's license or some other proof of identity, which is accepted by the State of Indiana or the person’s state of residence as legal identification;

(B) A state certificate of examination and approval from the sealer of weights and measures where the 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. The certificate shall state that the 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.

§ 00-11-110-05 LICENSE AND LICENSE FEE

Upon completion and submission of the application form to the Town Manager, along with payment of a $25 license fee, the Town Manager will issue a Solicitation License to the applicant, unless, after investigation, the applicant is found by the Town Manager to be in compliance with § 00-11-110-06. Each individual engaging in the activities of a solicitor must have his or her own license and show that license upon request by any Town official or individual with whom they are doing business in the Town as a solicitor.

§ 00-11-110-06 INVESTIGATION AND REFUSAL; REVOCATION

(A) Upon receipt of each application, the Town of Cumberland Town Manager will refuse to register the applicant if it is determined pursuant to the investigation above, that:

(1) The application contains any material omission or materially inaccurate statement;
(2) Complaints of a material nature have been received and proven against the applicant by authorities in any of the three previous cities, counties and towns 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; or

(4) The applicant failed to comply with any applicable provisions of §§ 00-11-110-03 and 04.

(B) Any license issued pursuant to this chapter may be revoked by the Town Manager for any of the following reasons:

(1) Any fraud, misrepresentation or false statement provided on the permit application form;

(2) any fraud, misrepresentation or false statement made in connection with the selling of goods, wares, merchandise, or services;

(3) conducting business in an unlawful manner or in a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public; and/or

(4) Any violation of the requirements of this chapter or any other provision of the Town Code.

If the Town Manager determines that license is revoked, the Town Manager will notify the solicitor in writing.

§00-11-110-07 APPEAL OF DENIAL OR REVOCATION

(A) Any person whose registration is denied or revoked may appeal the denial to the Town of Cumberland Town Council by filing with the Clerk-Treasurer within ten (10) days of the denial or revocation a written appeal. This appeal must state the reasons the application or registrant believes that the denial or revocation is contrary to this ordinance or otherwise contrary to law.

(B) Upon receiving the appeal, the Clerk-Treasurer will notify the Town Council of the appeal. The Town Council will conduct a hearing on the appeal within 14 days of the Clerk-Treasurer’s receipt of the appeal and will provide to the appellant written notice of the appeal hearing. This notice must be mailed to the appellant at the address provided by the appellant at least seven days prior to the appeal hearing.

(C) At the hearing on the appeal, the appellant may be represented by an attorney, may present evidence supporting the appeal, and may cross examine witnesses called by the Town Manager in support of the denial or revocation.

(D) Within 10 days of the hearing, the Town Council will make written findings and conclusions and mail the same to the appellant and the Town Manager.

(E) Either the Town Manager or the appellant may appeal the decision of the Town Council by filing an appeal with a court of competent jurisdiction within 30 days of the Town Council’s decision.
The following regulations shall govern the conduct of the registrant.

(A) It shall be unlawful for any direct seller to:

(1) Call at any dwelling or other place between the hours of 7:00 p.m. and 9:00 a.m., except by appointment;

(2) 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;

(3) To call at the rear door of any dwelling place; or

(4) To remain on any premises after being asked to leave by the owner, occupant or other person having authority over the 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 the visit, his or her identity or the identity of the organization he or she represents.

(C) It shall be unlawful for any direct seller to impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulation 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 in 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 is conducting business.

(F) Any person, firm or corporation who violates any provision of this article for which another penalty is not specifically provided shall, upon conviction, be subject to a fine in the amount of $500. Separate offense shall be deemed committed upon each day during which a violation occurs or continues.

§00-11-110-09 NOTICE OF FINE; APPEAL; PAYMENT OF FINE; COLLECTION

(A) In the event the Town Manager determines that a violation of this section has occurred, the Town Manager will deliver to the violator a fine citation. This citation will either be delivered personally to the violator or mailed to the violator.

(B) All fines are payable to the Clerk-Treasurer’s Office within 30 days of the date of the fine citation.

(C) The violator has 10 days from the date of the issuance of the fine citation to appeal the citation to the Town Council. The violator must file a written appeal with the Clerk-Treasurer. This appeal must state the reasons the violator believes that the fine is in error.

(D) Upon receiving the appeal, the Clerk-Treasurer will notify the Town Council of the appeal. The Town Council will conduct a hearing on the appeal within 14 days of
the Clerk-Treasurer’s receipt of the appeal and will provide to the appellant written notice of the appeal hearing. This notice must be mailed to the appellant at the address provided by the appellant at least seven days prior to the appeal hearing.

(E) At the hearing on the appeal, the appellant may be represented by an attorney, may present evidence supporting the appeal, and may cross examine witnesses called by the Town Manager in support of the denial or revocation.

(D) Within 10 days of the hearing, the Town Council will make written findings and conclusions and mail the same to the appellant and the Town Manager.

(E) Either the Town Manager or the appellant may appeal the decision of the Town Council by filing an appeal with a court of competent jurisdiction within 30 days of the Town Council’s decision.

(F) If the violator fails to pay the fine within 30 days of the issuance of the citation, or 30 days from the date of the Town Council’s decision if an appeal is filed, the Town Manager will refer the matter to the Town Attorney for collection. If the matter is referred to the Town Attorney for collection, the violator is liable to the Town of Cumberland for all court costs, filing fees, and reasonable attorney’s fees incurred by the Town in the collection of the fine and those expenses incurred by the Town in conjunction with any appeal.”