

**ORDINANCE 2019-5**

**AN ORDINANCE REGULATING TRANSIENT MERCHANTS IN THE CITY OF  
ARCADIA, WISCONSIN.**

The Common Council of the City of Arcadia, Wisconsin, do ordain as follows:

**SECTION 1.** Section 346-2 of the City of Arcadia Code of Ordinances is repealed and recreated to read:

“§ 346-2 Definitions.

In this chapter, the following terms shall have the meanings indicated:

**CHARITABLE ORGANIZATION**

Any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to be such.

**CLERK-TREASURER**

The City of Arcadia Clerk-Treasurer or Deputy Clerk-Treasurer.

**FOOD TRUCK**

A truck, van, or other vehicle or portable structure, such as a trailer, from which a merchant can sell food from any one or more locations.

**MERCHANDISE**

Personal property of any kind and shall include merchandise, goods, or materials provided incidental to services offered or sold. The sale of merchandise includes donations required by the seller for the retention of merchandise by a donor or prospective customer.

**PERMANENT MERCHANT**

Any person who, for at least one year prior to the consideration of the application of this chapter to said merchant:

- A. Has continuously operated an established place of business in the local trade area among the communities bordering the place of sale; or
- B. Has continuously resided in the local trade area among the communities bordering the place of sale and now does business from his residence.

**PERSON**

All humans of any age or sex, partnerships, corporations, associations, groups, organizations and any other description of a collection of human beings working in concert or for the same purpose or objective.

## SOLICITOR

Any person engaged in direct solicitation who:

- A. Seeks donations of money or other contributions of items of value for an organization or cause; or
- B. Sells items on behalf of an organization or cause but asks for a contribution of greater value than the item being sold.

## TRANSIENT MERCHANT

Any individual who engages in the retail sale of merchandise at any place in this state temporarily and who does not intend to become a permanent merchant of such place. For purposes of this definition, "sale of merchandise" includes a sale in which the personal services rendered upon or in connection with the merchandise constitute the greatest part of value for the price received, but does not include the sale of produce or other perishable products. For purposes of this chapter, the term "transient merchant" shall include food trucks, as well as direct sellers and solicitors seeking donations or funds for an organization, unless excepted."

**SECTION 2.** Section 346-4 of the City of Arcadia Code of Ordinances is repealed and recreated to read:

“§ 346-4 Application for registration.

- A. Registration information. Transient Merchants, excepting merchants who sell only farm or garden produce as defined under § 346-8 of this chapter, must apply to register as a transient merchant in the City. Applicants for registration must complete and return to the City Clerk-Treasurer 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) Height, weight, color of hair and eyes, and date of birth;
  - (3) Name, address and telephone number of the person, firm, association or corporation that the transient merchant 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 merchandise offered and any services offered;
  - (6) Proposed method of delivery of merchandise, if applicable;
  - (7) Make, model and license number of any vehicle to be used by the applicant in the conduct of his business;
  - (8) Last cities, villages, and towns, not to exceed three, where the applicant conducted similar business just prior to making this registration;
  - (9) Place where the applicant can be contacted for at least seven days after leaving this City; and

- (10) Statement as to whether the 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.
  - (11) The names and signatures of any owners of private property on which the applicant intends to operate his or her business, if the applicant is the operator of a food truck.
  - (12) Proof of approval of the Common Council if the applicant intends to operate a food truck on any public property owned by or within the municipal limits of the City of Arcadia.
- B. Identification and certification. Applicants shall present to the City Clerk-Treasurer for examination:
- (1) A driver's license or some other proof of identity as may be reasonably required;
  - (2) 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
  - (3) A State Health Officer's certificate where the applicant's business involves the handling of food or clothing and is required to be certified under state law, such certificate to 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 registration is made.
- C. Registration fee.
- (1) At the time of filing applications, a fee established by the Common Council by resolution shall be paid to the City Clerk-Treasurer to cover the cost of investigation of the facts stated in the applications and for processing said registration. Every member of a group must file a separate registration form. The primary applicant shall pay a registration fee established by the Common Council by resolution, plus the then-current Crime Information Bureau (CIB) investigation fee; each assistant under the application shall also be required to pay the CIB fee.
  - (2) The applicant shall sign a statement appointing the City Clerk-Treasurer his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally. Registration may be denied upon failure to comply with this subsection.
  - (3) Upon payment of said fee and the signing of said statement, the City Clerk-Treasurer shall register the applicant as a transient merchant and date the entry. Said registration shall be valid for a period of 30 days from the date of entry, subject to subsequent refusal as provided in § 346-5B below.
- D. Solicitors. Solicitors of funds or donations for charitable or other organizations shall comply with all disclosure and registration requirements above but shall be exempt from the registration fee; such applicants, however, shall each pay the current CIB fee.

- E. Bond. Every applicant not a resident of Trempealeau County, Wisconsin, or who being such resident represents a firm whose principal place of business is located outside the State of Wisconsin shall file with the City Clerk-Treasurer a surety bond, running to the City, in the amount of \$500 if registration is issued for less than six months and \$1,000 if registration is issued for six months or longer, with surety acceptable to and approved by the Mayor, conditioned that said applicant shall comply fully with all the provisions of the ordinances of the City of Arcadia and the statutes of the State of Wisconsin regulating peddlers, canvassers, solicitors, transient merchants, itinerant merchants, or itinerant vendors, as the case may be, and guaranteeing to any citizen of the City of Arcadia that all money paid as a down payment will be accounted for and applied according to the representations of the transient merchant and further guaranteeing to any citizen of the City of Arcadia doing business with said transient merchant that the property purchased will be delivered according to the representations of the transient merchant. Action on such bond may be brought by the person or persons aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the court, the face amount of the bond to the clerk of court in which suit is commenced, be relieved without costs of all further liability.
- F. Bond or insurance.
- (1) Applicants shall provide proof of an indemnity bond with good and sufficient sureties or proof of a policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the operation of the merchant's business in the City of Arcadia. The bond or policy shall name of the City of Arcadia as an additional insured. The bond or policy shall be filed in the office of the City Clerk-Treasurer.
  - (2) The bond or policy of insurance shall provide that the bond or policy shall protect the City of Arcadia against any liability arising from any claim, the basis of which arose as a direct or indirect result of the transient merchant's business, whether the claim is filed after the bond or policy of insurance expires or not, provided that the claim arose after the bond or the policy of insurance became effective.
  - (3) The applicant shall pay the bond or policy premium.”

**SECTION 3.** Section 346-3 of the City of Arcadia Code of Ordinances is repealed and recreated to read:

“§ 346-3 Exemptions.

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

- A. Regular delivery routes. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes.
- B. Wholesalers. Any person selling merchandise at wholesale to merchants who deal in such merchandise who are not subject to this chapter.
- C. Agricultural products. Any person selling only agricultural products which the person has grown.

- D. Deliveries by permanent merchants. Any permanent merchant or employee thereof who takes orders at the home of the buyer for merchandise regularly offered for sale by such merchant within Trempealeau County and who delivers such merchandise in his regular course of business.
- E. Requested home visits. Any person who has an established place of business where the merchandise being sold is 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. Prior sales transactions. 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. Services not offering merchandise. Any person selling or offering for sale a service unconnected with the sale or offering for sale of merchandise.
- H. Auctions; sales authorized by statute. 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. Charitable organizations; limited exemption. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of said organization shall be exempt from fees imposed by this chapter, provided that there is submitted to the City Clerk-Treasurer proof that such charitable organization is registered under § 202.12, Wis. Stats., and the charitable solicitors register with the City under this chapter. Any charitable organization engaging in the sale of merchandise and not registered under § 202.12, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this chapter.
- J. Alleged transient merchants. Any person who claims to be a permanent merchant but against whom complaint has been made to the City Clerk-Treasurer that such person is a transient merchant, provided that there is submitted to the City Clerk-Treasurer proof that such person has leased for at least one year, or purchased, the premises from which he/she is conducting business, or proof that such person has conducted such business in this City for at least one year prior to the date complaint was made.
- K. Persons licensed by examining boards. Any individual licensed by an examining board as defined in § 15.01(7), Wis. Stats.
- L. City-authorized events. Transient merchants while doing business at special events authorized by the Common Council and with express prior written permission from the organizer of the special event or a person authorized to act on behalf of the organizer of the special event.
- M. Resident juveniles. Juveniles under the age of 18 who are residents of the Arcadia School District. This exemption does not apply to Food Trucks."

**SECTION 4.** This Ordinance #2019-5 shall take effect upon passage and publication as provided by law.

ADOPTED at a regular meeting of the City of Arcadia Common Council this 7th day of August, 2019.

CITY OF ARCADIA

By:   
Robert Reichwein, Mayor

ATTEST:   
Angela Berg, Clerk

Adopted: August 7, 2019

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