

Montgomery County Board of Commissioners

Ordinance 2016-24

**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 Montgomery County, 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 Montgomery County, 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 Montgomery County, the Board of Commissioners finds that direct sellers should be registered with the County prior to conducting business in the County; and

**Whereas**, the Board of Commissioners finds that direct sellers must register with the County by completing a registration form at the office of the Montgomery County Sheriff; and

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

**Whereas**, the Board of Commissioners finds that it is in the best interest of the Montgomery County and the citizens of the County to adopt a new section of the Montgomery County Code Book, Title XI: Business Regulations, Section 114, to be titled "Direct Sellers", detailing the County policies and procedure.

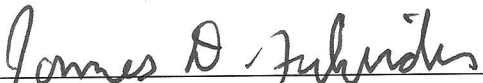
**Therefore, it is ordained** that Title XI: Business Regulations, Section 114 "Direct Sellers" is hereby codified in the Montgomery County Code Book. This new section is attached as "Exhibit A", and shall read in accordance with that Exhibit.

**It is further ordained** that any other section of the Montgomery County Code Book 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 12th day of September, 2016.

A Majority of the  
Montgomery County Board of Commissioners

  
James D. Fulwider, President

  
Phil Bane, Vice President

  
Terry Hockersmith, Member

Attest:   
Jennifer Andel, Auditor

Exhibit A

**"CHAPTER 114: DIRECT SELLERS**

Section

- 114.01 Definitions
- 114.02 Exemptions
- 114.03 Registration Requirements
- 114.04 Additional information required
- 114.05 License and license fee
- 114.06 Investigation
- 114.07 Appeal
- 114.08 Conduct regulations
- 114.09 Revocation of registration

**§114.01 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, and shall include 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 County or has continuously resided in this County and now does business from his residence.

(Comm. Ord 2016-24, passed \_\_\_\_\_ - \_\_\_\_\_-16)

**§114.02 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 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 the merchant within the county 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.

(Comm. Ord 2016-24, passed \_\_\_\_\_ - \_\_\_\_\_-16)

**§114.03 REGISTRATION REQUIREMENTS**

(A) Applicants must complete and return to the Montgomery County Sheriff'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 Sheriff 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 county; 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.

(Comm. Ord. 2016-24, passed - -16)

#### **§114.04        ADDITIONAL INFORMATION REQUIRED**

Each applicant shall present to the Montgomery County Sheriff's Office 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 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.

(Comm. Ord. 2016-24, passed - -16)

#### **§114.05        INVESTIGATION AND REFUSAL**

- (A) Upon receipt of each application, the Montgomery County Sheriff 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 § 114.03.

(Comm. Ord. 2016-24, passed - -16)

#### **§114.06 APPEAL OF DENIAL OR REVOCATION**

(A) Any person whose registration is denied or revoked may appeal the denial to the Board of County Commissioners by filing with the Auditor 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 Auditor will notify the Board of County Commissioners of the appeal. The Board will conduct a hearing on the appeal within ten (10) days of the Auditor'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 Sheriff in support of the denial or revocation.

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

(E) Either the Sheriff or the appellant may appeal the decision of the Board by filing an appeal with a court of competent jurisdiction within 30 days of the Board's decision.

(Comm. Ord. 2016-24, passed - -16)

#### **§114.07 CONDUCT REGULATIONS**

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.

(Comm. Ord. 2016-24, passed - -16)

#### **§114.08 REVOCATION OF REGISTRATION**

The registration of a direct seller may be revoked by the Montgomery County Sheriff for any violation of this article.

(Comm. Ord. 2016-24, passed - -16)

#### **§114.09 NOTICE OF FINE; APPEAL; PAYMENT OF FINE; COLLECTION**

(A) In the event the Sheriff determines that a violation of this section has occurred, the Sheriff 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 Sheriff 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 Board of County Commissioners. The violator must file a written appeal with the Auditor. This appeal must state the reasons the violator believes that the fine is in error.

(D) Upon receiving the appeal, the Auditor will notify the Board of County Commissioners of the appeal. The Board will conduct a hearing on the appeal within ten (10) days of the Auditor'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 Sheriff in support of the denial or revocation.

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

(E) Either the Sheriff or the appellant may appeal the decision of the Board by filing an appeal with a court of competent jurisdiction within 30 days of the Board'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 Board's decision if an appeal is filed, the Sheriff will refer the matter to the County Attorney for collection. If the matter is referred to the County Attorney for collection, the violator is liable to Montgomery County for all court costs, filing fees, and reasonable attorney's fees incurred by the County in the collection of the fine and those expenses incurred by the County in conjunction with any appeal."