

CHAPTER 95
HOME IMPROVEMENT CONTRACTORS AND SALESPERSONS

Table

95-14 Home Improvement Contractor
and Salesperson Licenses

**95-14. Home Improvement Contractor and
Salesperson Licenses.**

1. DEFINITIONS. In this section:

a. "Person" means any person, firm, partnership, corporation or limited liability company.

b. "Contractor" means any person engaged in the business of installing, repairing, servicing, improving or remodeling any permanent installation or improvement attached to an existing home or building used for residence purposes but not exceeding 6 living units, accessory buildings, or any appurtenance thereto, or any sidewalks, driveways or other approaches to such building. This shall include, but not be limited to, roofing, walls, siding, windows, doors, floors, partitions, ceilings, porches, awnings, heating, furnace cleaning, air conditioning, chimneys, water softeners, humidifiers, purifiers, electrical installations, plumbing installations, concrete work, painting and sheet metal work.

c. "Salesperson" means any person who solicits or sells at any place within the city, other than within a building or structure used as a place of business, any home improvement or permanent installation or similar improvement attached to an existing home or building used for residence purposes, but not exceeding 6 living units, accessory buildings, or any appurtenance thereto, or any sidewalks, driveways, or other approaches to such building. This shall include, but not be limited to, roofing, walls, siding, windows, doors, floors, partitions, ceilings, porches, awnings, heating, furnace cleaning, air conditioning, chimneys, water softeners, humidifiers, purifiers, electrical installations, plumbing installations, concrete work, painting and sheet metal work. Any person performing emergency services requiring the installation of parts where the total cost does not exceed \$100 shall not be considered a salesperson under this section.

2. LICENSE REQUIRED.

a. Requirement. No person shall within the city engage in the business of salesperson or act as a contractor without first having obtained a contractor or salesperson's license as provided in this section.

b. Exemptions.

b-1. A master plumber licensed under the statutes of the state of Wisconsin or an electrical contractor licensed under the statutes of the state of Wisconsin need not obtain a contractor's or a salesperson's license, but shall in all other respects comply with this section.

b-2. Individuals, corporations which include only one person, or limited liability companies having only one member, which have been issued a contractor's license as provided in this section, need not have a salesperson's license, but shall in all other respects comply with this section.

b-3. Any company or industry regulated under ch. 196, Wis. Stats., and any persons who are employees thereof shall be exempt from this section.

3. APPLICATION.

a. Applications for new and renewal contractor or salesperson licenses shall be filed with the city clerk on forms provided therefor.

b. The application shall require:

b-1. The name and permanent address of the applicant.

b-2. The name and permanent address of the applicant's employer.

b-3. If the applicant is a corporation or limited liability company, the name of the corporation shall be set forth exactly as it is set forth in its articles of incorporation, together with the names and permanent address of each of its officers, directors and designated managers, if any; the application shall be verified by an officer of the corporation. If one or more of the officers is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate officers.

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b-4. If the applicant is a partnership, the application shall set forth the name and permanent address of each of the partners, including limited partners, and each partner shall verify the application. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partners.

b-5. If the applicant is a club, association or other organization that is neither a corporation nor partnership, the application shall set forth the exact name of the entity together with the names and permanent addresses of all officers and be verified by an officer of the club, association or organization.

b-6. The date of birth of the applicant.

b-7. Whether the applicant has prior to the date of application been licensed in this city as a contractor or salesperson as defined in this section.

b-8. Such other reasonable and pertinent information the common council or the proper licensing committee may from time to time require.

c. Post office box numbers shall not be acceptable for addresses required on applications for home improvement contractor and salesperson licenses.

d. Photos. Each individual applicant for a home improvement or salesperson license shall present one recent photograph to the city clerk.

e. Fingerprinting. All applicants for home improvement contractor or salesperson licenses shall be fingerprinted as provided in s. 85-21-1.

f. Changes, Transfers.

f-1. Changes to be Reported. All persons licensed under this section shall notify the city clerk whenever there is a change in any information that is reported in the application form or renewal application form within 10 days after the change occurs.

f-2. Transfer of License or Change of Name. See s. 85-19 for provisions relating to the transfer of licenses and change of licensee names.

4. LICENSE FEE; PERIOD. All applications shall be accompanied by the fee specified in s. 81-60. See s. 81-60 for the required license fees and the date of expiration.

5. INSURANCE. Upon application, every person applying for a contractor's license shall file with the city clerk a certificate of insurance. The certificate of a contractor's general liability and property damage insurance shall be in the sum of not less than \$25,000 per person, \$50,000 per accident, bodily injury liability, and \$10,000 property damage liability or combined single limit of not less than \$60,000 per occurrence.

6. INVESTIGATION AND COMMON COUNCIL ACTION; APPLICATION FOR NEW LICENSE. Each license application shall be referred to the chief of police, who shall cause an investigation to be made and report his or her findings to the city clerk. If the chief files no written report summarizing the arrests and convictions of the application which could form a basis for denial, the city clerk shall issue the license. If the chief files a written report summarizing the arrests and convictions of the applicant which could form a basis for denial, the application shall be subject to common council review and approval in accordance with the provisions of ss. 85-2.5 and 85-2.7.

7.5. DISQUALIFICATION. Whenever any application is denied, or license not renewed, revoked or surrendered, the procedures for disqualification for license provided in s. 85-13 shall apply.

8. ISSUANCE OF LICENSE.

a. If the common council grants the application for a home improvement contractor or salesperson license, the city clerk shall issue an appropriate document to the applicant confirming that fact. The license shall contain the person's true first name, surname and middle initial, the picture of the applicant if individual, the number of the license, the period of time for which the license is valid, and a statement that issuance of the license does not constitute an endorsement by the city of the person or product. The license shall be in such form as to avoid alteration.

b. The license shall be carried on the person of the salesperson or contractor and shall be exhibited to any person requesting to see the same at any time while the person is engaged in selling or soliciting business.

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9. PROCEDURES FOR NON-RENEWAL, REVOCATION OR SUSPENSION OF LICENSE.

a. Procedure for Renewal. Applications for renewal shall be made to the city clerk. The clerk shall refer the application to the chief of police for review. If the chief indicates that the applicant still meets the licensing qualifications, the city clerk shall issue the license unless a written objection has been filed with the city clerk at least 45 days prior to the date on which the license expires. Any interested person may file the objection. If a written objection is filed, or if a determination is made that the applicant no longer meets the licensing qualifications, the application shall be forwarded to the licensing committee for its recommendation to the common council.

b. Revocation or Suspension. Any license issued under this section may be revoked or suspended for cause by the common council. Suspension or revocation proceedings may be instituted by the licensing committee upon its own motion, or upon sworn written charges made and filed with the city clerk by the chief of police, or upon a sworn written complaint filed with the city clerk by any interested party.

c. Due Process Hearing and Common Council Review. If there is a possibility that the licensing committee will not recommend renewal of the license, or if suspension proceedings are initiated, the procedures for notice and committee hearing and for the committee report, recommendations and common council consideration provided in ss. 85-3 to 85-5 shall apply.

d. Grounds for Non-renewal, Revocation or Suspension. The recommendation of the committee regarding the licensee shall be based on the preponderance of evidence presented at the hearing. Probative evidence concerning non-renewal, suspension or revocation may include evidence of:

d-1. Failure of the licensee to meet the municipal qualifications or any of the terms of this section.

d-2. Pending charges against or the conviction of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the circumstances of the particular licensed activity, by the licensee, his or her employees, subcontractors or customers.

d-3. Failure to obtain any permit required under the ordinances of the city or the laws of the state of Wisconsin, or employing persons not authorized to do any specific work as required under the ordinances of the city or laws of the state of Wisconsin.

d-4. Whether the licensee, or his or her employees, has violated any of the required and prohibited practices set forth in this section.

d-5. Whether the licensee has been issued a warning letter or had the imposition of administrative sanctions by the Wisconsin department of agriculture, trade and consumer protection.

d-6. Whether a judgment has been rendered against the licensee by any court of competent jurisdiction regarding violations of ordinances of the city or laws of the state of Wisconsin the nature of which substantially relate to the particular activity for which the license is issued, or a judgment has been rendered against the licensee.

d-7. Any failure of the licensee to complete work on a project in accordance with the contractual written specifications for the work set forth pursuant to sub. 12-c-1 and 2, or to complete the work within the time period specified in the contract or agreement for the work pursuant to sub. 12-c-4.

d-8. Any other factor which reasonably relates to the public health, safety and welfare.

e. Evidence of Quality of Workmanship Excluded. The recommendations of the committee regarding the licensee shall not be based on evidence presented at the hearing related to quality of workmanship.

h. Request to Surrender a License. If a licensee who has surrendered his or her license wishes to have the surrendered license returned, the licensee must request, in writing, permission from the licensing committee to do so and appear before the committee at the date, time and place specified in written notice provided to the licensee by the city clerk. The committee may approve the request and return the license without further action by the common council, or make a recommendation to the common council to deny the request based on the same grounds set forth in this section for non-renewal or revocation. If the committee makes a recommendation to deny the request for the return of the license, all committee recommendations shall be prepared and common council actions conducted in the same manner set forth in this section for non-renewal or revocation.

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12. REQUIRED AND PROHIBITED PRACTICES. All persons licensed under this section shall:

a. **Pay All Subcontractors.** Pay all subcontractors and material suppliers so that no liens are filed against the owner of the property to whom the sale has been made, and furnish such owner waivers of liens from material suppliers and subcontractors within 30 days of completion of any job; except that where any subcontractor or material supplier's bill is the subject of a bona fide dispute in a legal action, no waivers need be furnished until the determination of such action. Legal action in this section shall include any type of arbitration or 3rd party determination of the dispute recognized by the trade.

b. **Furnish Copies of All Written Documents.** Furnish to the purchaser a copy of all written documents which the purchaser is requested to sign at the time of signing.

c. **Written Agreements.** Before starting work of any kind, enter into a contract or firm agreement with the purchaser as to price and the work to be done, provided that no written contract shall be required where the work to be done is of an emergency nature and the total cost does not exceed \$100. Any such agreement shall include therein a complete statement as to:

c-1. The specific work to be done.

c-2. The material to be used, describing it by brand name, if possible, and by weight, size and color.

c-3. Guarantees and warranties made or represented to buyer in writing, setting forth by whom guaranteed or warranted, and any and all exclusions and limitations as to cost of repair, replacement of parts, service charges and labor charges.

c-4. The time in which the work is expected to be completed.

c-5. All financing, including the initial cost, any time charges, interest, etc., and the total cost including such charges, together with the amount of payment, the time at which the payments will begin, and the length of time for which they will continue.

c-6. A statement agreeing to restore and repair any part of the property of the purchaser destroyed or damaged, where such damage results from the negligent acts of the contractor, his or her agents or subcontractors.

c-7. A statement of the fact that the contractor or salesperson has a license from the city does not constitute an endorsement of the person or product by the city.

d. **Other Regulations.** No contractor or salesperson obtaining a license under this section shall:

d-1. Imply that having a license constitutes an endorsement or recommendation of the city. No person shall advertise in any manner that they have obtained a license from the city.

d-2. Use any false or deceptive inducements or misrepresent or falsely state to a prospective customer that his or her dwelling or building is to serve as a "prospective buyer" lure or "model home" or "advertising job," and that he or she will be paid a commission or other compensation for any other sales the seller may make in the vicinity or within a specified distance from the customer's location, and in that way lead the customer to believe that the cost of the improvement or installation will be fully paid or reduced by reason thereof.

d-3. Misrepresent to a prospective customer that he or she is being given a special, introductory, confidential, close-out, factory or wholesale price or discount, or any other concession; or that this price or discount or any other concession is made due to materials left over from a nearby job or a test of the local market or a market survey.

d-4. Misrepresent that anyone, whether connected with the seller or not, is especially interested in seeing that the prospective customer gets a bargain, special price, discount or any other concession.

d-5. Substitute any product or material, or deliver or install or apply a product of different brand, grade or quality from that represented by any sample, illustration or model.

d-6. Misrepresent or mislead prospective customers into believing that:

d-6-a. Fire resistant materials are incombustible or fire-proof.

d-6-b. The product needs no periodic repainting, refinishing, maintenance or any other service.

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d-6-c. The product is of a specific or well-known brand name or manufacture, or that the product is nationally advertised.

d-6-d. The product meets or exceeds minimum municipal, state, federal or other applicable standards or requirements.

d-6-e. The product is of a specific size, weight, grade or any other identifiable character.

d-6-f. The product is approved or recommended by any government agency, or other applicable organizations, or that they are the users of said product.

d-6-g. The product is or will be custom-built or specially designed for the needs of the customer.

d-6-h. The buyer need not obtain any permit, authorization or approval from any municipal, state or federal government agency to apply or install the product, or that the seller has or will obtain such permission or approval.

d-6-i. The product will not be damaged by hail or other storm.

d-7. Give any guarantee that is not specific, clear and definite or which shall misrepresent or lead the customer to believe that the manufacturer or anyone else is the guarantor of the product, or give any guarantee unless the same is given in writing.

d-8. Start installation or apply a small portion of the product with the misrepresentation that it is a tryout or test, or any other reason, where in fact it is done so the seller can claim partial performance or that work has actually begun on the job, and induce or force the purchaser into the terms of the contract.

d-9. Misrepresent or mislead the prospective customer into believing that insurance or some other form of protection will be given if the customer in any way is unable to make the payments agreed upon.

d-10. Misrepresent or mislead the customer into believing that the signing of any completion slip, financial statement, advertising agreement, contract, bond or promissory note, or any other document, either before or after completion of the job, will impose no obligation upon the customer, or that such signing will relieve or end some or all of the obligations of the seller.

d-11. Ask or require the customer to sign a completion slip before the installation or job is completed in accordance with the terms of the contract.

d-12. Gain entry or access into the prospective customer's home or into his property under the guise of any governmental inspection right or duty, or the misrepresentation that the seller has such authority, or under the guise that the seller is an employee or represents a public utility.

d-13. Misrepresent or lead the customer to believe that some product or part is unavailable or that there will be a long delay in manufacture, delivery or service, in order to induce or force a customer to buy a product from the seller.

d-14. Fail to disclose in advertising that the advertised prices or offer does not include delivery or installation, if such is the fact.

d-15. Fail to disclose in writing all financial arrangements, interest, service fees, credit investigation costs, and building or installation permit fees, or that the promissory note or any other similar instrument will be placed with a financial institution for collection.

d-16. Misrepresent through the use of any picture, drawings or illustrations, scare tactics, demonstration devices or claims which threaten or imply any physical, mental or bodily harm.

d-17. Misrepresent that the seller is an employee, officer or representative of a manufacturer, importer or any other person, firm, or organization, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract.

d-18. Misrepresent that maintenance, service or repairs, and replacement parts will be readily available within the customer's immediate trade area.

d-19. Disparage or degrade any of the seller's own advertised products or services, in order to induce or attempt to induce the customer to buy higher priced products or materials from the seller.

d-20. Misrepresent to the purchaser that his or her property is or will be condemned if no work is done.

d-21. Promise or give any money as an inducement for making the sale

d-22. Represent to the purchaser that his or her taxes or insurance rates will or will not be affected as a result of the sale or installation.

d-23. Use a contract of any other person when not properly authorized.

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13. CONTRACTOR'S RESPONSIBILITY FOR SALES PERSONNEL. Each contractor obtaining a license shall be responsible for the acts of his or her salesperson regardless of whether the same be his or her employees, agents or subcontractors, and shall be subject to all the penalties to which the salesperson shall be subject, if the salesperson violates this section, including revocation of his or her license.

13.5. TERMINATION OF SALESPERSON'S EMPLOYMENT WITH HOME IMPROVEMENT CONTRACTOR. If a licensed home improvement salesperson is separated from employment with a licensed home improvement contractor for any reason, the licensed contractor shall notify the city clerk of the separation in writing within 10 days of the separation. The licensed salesperson shall surrender the salesperson's license to the city clerk not later than 10 days following that day on which separation from employment occurred.

14. PENALTY. a. Any person acting as a salesperson or contractor without having obtained a license so to act or violating any other provision of this section shall be punished by a forfeiture of not less than \$250 nor more than \$3,000. On default of payment thereof, such person shall be committed to the county jail or house of correction for not less than 10 days nor more than 90 days. Each day in which any person shall operate as a salesperson or contractor without having obtained a license, or after revocation or suspension of the same, shall constitute a separate offense.

b. In addition to other applicable enforcement procedures and pursuant to the authority of s. 66.0113, Wis. Stats., the department of neighborhood services may issue citations pursuant to the citation procedure set forth in s. 50-25 to any person violating sub. 2. The police department is also authorized to issue citations for violations of sub. 2.

For legislative history of chapter 95, contact the Municipal Research Library.

Pages 435-452 are blank.