

Town of Winchester
Annual Spring Town Meeting



ARTICLE 2
Revised

To see if the Town will vote to amend the Town of Winchester Code of By-Laws by adding a new Chapter 21, as follows, or take any other action in relation thereto:

SOLICITATIONS AND CANVASSING

Section 1. STATEMENT OF PURPOSE

This by-law is intended to secure for residents of the town the tranquility that they reasonably expect to enjoy in the privacy of their homes and to protect them from unreasonable intrusion by unrequested and unwanted solicitation and canvassing. It is framed with deep respect for the principles embodied in the Constitutions of the United States and the Commonwealth of Massachusetts and attempts to achieve a workable balance between the right of free speech and the right of privacy. It is intended to be construed strictly to achieve its purpose by imposing certain restrictions as to the time, place and manner in which solicitation and canvassing are conducted. It is not intended to be applied to charitable, benevolent, political or religious activities, or any other non-commercial activities entitled to protection under the First Amendment to the United States Constitution.

Section 2. DEFINITIONS

(a) “Solicitation or canvassing” means traveling by foot, motor vehicle or any type of conveyance, from place to place, from house to house, or from street to street, for salary, commission or other remuneration, whether on behalf of oneself or of another person, firm or corporation and:

(1) Selling, leasing or taking orders for the sale of any goods, wares, merchandise or services whatsoever, including without limitation books, periodicals, food, and home improvement services, or attempting to so sell, lease or take orders, whether or not advance payment on such sales is collected; or

(2) Seeking or requesting donations of money, goods or services for any for-profit or nonprofit entity.

(b) “Residential property” means any property in residential use within the meaning of the Town of Winchester Zoning Bylaw, including without limitation an individual dwelling unit.

Section 3. PROHIBITION AND REQUIREMENTS

- (a) No person shall engage in solicitation or canvassing in or upon any private residential property in the Town of Winchester, and no firm, corporation, organization or other entity shall arrange for any person to engage in solicitation or canvassing in or upon any residential property, without first registering with the Chief of Police as required by this Chapter not less than seven (7) business days before commencing such solicitation or canvassing and obtaining from the Chief of Police a certificate evidencing such registration.
- (b) Persons engaged in solicitation or canvassing shall carry such certificate or registration while so engaged and shall produce such certificate upon the request of a police officer.
- (c) Immediately upon encountering an occupant of any residential property, a person engaged in solicitation or canvassing shall present such certificate of registration for inspection and inform the occupant of the nature and purpose of his or her business and, if he or she is representing an organization, firm or other entity, the nature and purpose of such organization, firm or other entity.
- (d) Each person engaged in solicitation or canvassing in or upon any residential premises shall immediately leave such premises upon the request of any occupant.
- (e) No person shall engage in solicitation or canvassing in or upon any residential property upon which is displayed a sign prohibiting trespassing, solicitation or canvassing.
- (f) No person engaging in solicitation or canvassing shall misrepresent in any way his or her true objective, status or mission or that of any organization on behalf of which he is so engaged.
- (g) Persons engaging in solicitation or canvassing shall comply with all federal, state and local laws and regulations, including, but not limited to, consumer protection laws such as MGL cc. 93, 93A and 255D.

Section 4. REGISTRATION

- (a) Persons seeking registration certificates in accordance with this by-law shall apply thereof not less than seven (7) business days before commencing solicitation or canvassing in the Town of Winchester. Such application shall be submitted to the Town Clerk along with the required application fee, and shall be signed under the penalties of perjury.
- (b) The applicant shall provide the following information on a form provided by the Town:
 - (1) Personal Information
 - Applicant's Full Name;
 - Residential Address and Phone Numbers;
 - Date of birth;
 - Driver's license number and state; or state identification card number and state; or passport number and country;
 - (2) Business Information
 - Business name and phone number;

Description of the nature of the business and the goods or services to be sold;

Length of time for which applicant seeks to conduct business in the Town of Winchester;

(3) Vehicle Information

If applicant is operating or being transported by a motor vehicle, the year, make, model, color, registration number, state of registration, owner's name and address of each such vehicle.

- (c) Fee. Upon filing such application each applicant shall pay a nonrefundable filing fee in the amount of \$50.

Section 5. INVESTIGATION AND ISSUANCE

(a) Upon receipt of an application for registration the Chief of Police shall investigate the applicant's background to determine from prior business practices whether said applicant is a suitable person to be licensed. Within seven (7) business days of the filing of such application, the Chief of Police or his or her designee shall either approve such application and cause the certificate of registration to be issued or deny such application, stating the reason(s) for such denial. Failure of the Chief of Police or his or her designee to so act within seven (7) business days shall constitute approval of said application.

(b) In conducting his or her investigations, the Chief of Police may conduct reviews of reports including Criminal Offender Records Information (CORI) and Sex Offender Records Information (SORI). In addition, the Chief of Police may require the submission of other identifying information to the extent permitted, and in the manner required, by law.

(c) Grounds for denial shall include but are not limited to the following:

(1) A conviction in any state or federal court of the United States or any court of a territory of the United States for any of the following named offenses committed within seven (7) years prior to the date of such application shall constitute grounds for denial of such application: burglary, breaking and entering, larceny, robbery, receiving stolen property, assault, fraud, sexual misconduct as specified in Chapter 265, Sections 13B and 22 through 24, and Chapter 272, Section 53 of the General Laws, unlawfully carrying weapons, or the attempt of any such offense;

(2) The failure to include any of the information requested in the application.

Section 6. CONTENTS OF CERTIFICATE

Each certificate of registration shall contain the signature of Chief of Police or his or her designee and shall show the name, address and photograph of the holder of said certificate, date of issue, the description of the certificate holder's business provided pursuant to Section 4(b)(2), and a registration number.

Section 7. EXPIRATION OF CERTIFICATE

Each certificate of registration issued pursuant to this by-law shall expire ninety (90) days from date of issue.

Section 8. TRANSFER OF CERTIFICATE

No certificate of registration may be transferred to any other person or entity.

Section 9. REVOCATION OF CERTIFICATE

The Chief of Police may revoke the certificate of registration of any solicitor or canvasser for violation of any provision of law, including this by-law, or for providing false information on the application.

Section 10. APPEAL

(a) Any applicant aggrieved by the action of the Chief of Police in denying such application or in revoking such certificate of registration may appeal in writing to the Board of Selectmen within seven (7) business days of the action complained of by filing such appeal with the Town Clerk. The Board of Selectmen shall hold a hearing and render a decision within thirty (30) days of the date the appeal is received by the Town Clerk.

(b) If the Board of Selectmen fails to render a decision within thirty (30) days, the action of the Chief of Police shall be deemed to be upheld.

Section 11. DUTIES OF POLICE DEPARTMENT

The Police Department shall keep a record of all certificate of registration, including registration numbers, and application thereof for a period of six years after application.

Section 12. EXCEPTIONS

The provisions of this by-law shall not apply to the following persons:

- (a) Any person duly licensed under Massachusetts General Laws Chapter 101.
- (b) Any person employed in the sale or delivery of newspapers pursuant to Massachusetts General Laws Chapter 149, § 69.
- (c) Any officer or employee of the town, county, state or federal government on official business, or any other person soliciting or canvassing on behalf of any such entity, including, without limitation, a public school or a program or department thereof.
- (d) Any route salesperson or other person having established customers making periodic deliveries to such customers or making calls upon prospective customers to solicit orders for periodic route deliveries, including, but not limited to, a news carrier, dairy delivery person, and a person acting on behalf of “farmshare” or “community supported agriculture” enterprises.

- (e) Any person involved in the dissemination of political or religious materials or speech or any other non-commercial activity protected by the United States and Massachusetts Constitutions.
- (f) Any person soliciting or canvassing on or behalf of any charitable, benevolent, political or religious organization, including, without limitation, an organization organized pursuant to Massachusetts General Laws Chapter 180, § 4.

Section 13. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this by-law shall be declared invalid, the remainder shall continue in full force and effect.

Section 14. PENALTY

Enforcement of this Chapter shall be pursued through the provisions of M.G.L. c. 40, § 21D, which provides for the non-criminal disposition of by-laws. A violation of this Chapter shall be punishable by a fine of \$100 for the first offense; \$200 for the second offense; and \$300 for each subsequent offense. The enforcing person shall be the Winchester Chief of Police or his or her designee, who shall, as an alternative to instituting criminal proceedings, give any offender of this Chapter a written notice to appear before the Clerk of the Woburn District Court for a non-criminal disposition of the violation, in accordance with said § 21D.

(Board of Selectmen)