Town of Winchester

Town Manager's Office
71 Mt. Vernon Street
Winchester, MA 01890
Phone: 781-721-7133
Fax: 781-756-0505
townmanager@winchester.us

Board of Selectmen Meeting
Tuesday, November 1, 2016

BUSINESS

Docket Item **G - 5:** Article 5: Solicitation ByLaw

Supporting Documents:

G – 5: Fall Town Meeting Warrant Article 5.

Action Required:

G – 5: Hear presentation and consider / vote a recommendation to Town Meeting Members.

ARTICLE 5: To see if the Town will vote to amend the Town of Winchester Code of By-Laws by adding a new chapter, as follows:

SOLICITATIONS AND CANVASSING

Section 1. STATEMENT OF PURPOSE

This by-law is intended to secure for residents of the town the tranquility which 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 framed narrowly and 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 political or religious 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" includes without limitation each individual dwelling unit.

will serve in judgment of the appeal, and will have full discretion to reject, request additional details, reduce the severity of the penalties, continue, or enforce as issued the violation under appeal. The ruling of the Hearing Officer shall be final and not subject to further appeals within the Town's governance system.

8. Invalidity/Severability

If any provision of this bylaw shall be determined to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction, the remaining provisions of this bylaw shall continue in effect to the fullest extent permitted bylaw.

Or take any other action in relation thereto.

(Board of Selectmen)

ARTICLE 5: To see if the Town will vote to amend the Town of Winchester Code of By-Laws by adding a new chapter, as follows:

SOLICITATIONS AND CANVASSING

Section 1. STATEMENT OF PURPOSE

This by-law is intended to secure for residents of the town the tranquility which 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 framed narrowly and 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 political or religious 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" includes without limitation each 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 not less than seven 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 business and, if he 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 the 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 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 c. 93, 93A and 255D.

Section 4. REGISTRATION

(a) Application. Persons seeking registration certificates in accordance with this by-law shall apply thereof not less than seven days before commencing solicitation or canvassing in the Town of Winchester. Such application shall be signed under the penalties of perjury and shall contain the following information on a form provided by the Chief of Police:

(1) Applicant's name;
(2) Applicant's business, residence and local address;
(3) Applicant's business, residence and local telephone numbers;
(4) Applicant's date of birth;
(5) Applicant's driver's license number and state of issue;
(6) Applicant's sex, race, height, weight, hair color and eye color;
(7) Length of time for which applicant seeks to conduct business in the Town of Winchester;
(8) Description of the nature of the business and the goods or services to be sold or purpose(s) for which donations are to be requested;
(9) Name, home office address and home office telephone number of applicant's employer, if any, or statement of self-employment;

(10) 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.
(11) Such other identifying information as may be required by the Chief of Police.

(b) 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 cause to make an investigation of the applicant's background and reputation. Within seven days of the filing [of] such application the Chief of Police or his 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 designee to so act within seven days shall constitute approval of said application.

(b) 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 years prior to the date of such 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 designee and shall show the name, address and photograph of the holder of said certificate, date of issue and registration number.

Section 7. 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 days of the action complicated of. The Board of Selectmen shall hold a hearing and render a decision within 30 days of the date the appeal is received.

(b) If the Board of Selectmen fails to render a decision within 30 days the appeal shall be deemed to be upheld.

Section 8. EXPIRATION OF CERTIFICATE

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

Section 9. TRANSFER OF CERTIFICATE

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

Section 10. REVOCATION OF CERTIFICATE:

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

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. Enforcement authority of this By-Law shall be by criminal complaint filed by the Police Department.

Section 12. EXCEPTION

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

(a) Any person duly licensed under Chapter 101 of the General Laws or any persons exempted under Chapter 101, Chapter 149, Section 69, Chapter 180, Section 4, or any other General Law.

(b) Any officer or employee of the town, county, state or federal government on official business; or

(c) Route salespersons or others 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 news carriers.

Section 13. SEVERABILITY

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

Section 14. PENALTY

Whoever violates any provisions of this by-law shall be liable to a penalty of not less than $300 for each offense.

Or take any other action in relation thereto.

(Board of Selectmen)

ARTICLE 6: To amend the Zoning Bylaw by adding Section 8.10.