



REVISED

ARTICLE 17. 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:

SOLICITATION AND CANVASSING

Section 1. STATEMENT OF PURPOSE

This by-law establishes registration requirements for persons intending to engage in door-to-door solicitation or canvassing in the Town of Winchester in order to (1) protect the citizenry from disruption of peaceful enjoyment of their residences and from the perpetration of fraud or criminal activity; and (2) to allow for reasonable access to residents in their homes by persons or organizations who wish to communicate commercial messages. The by-law attempts to achieve a balance between the right of free speech and the right of privacy. It does not apply to non-profit, 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

2.1 “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 on behalf of another person, for-profit firm, corporation or entity and:

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

2.2 “Residential property” means any property in residential use within the meaning of the Town of Winchester Zoning By-law, including without limitation an individual dwelling unit.

2.3 “Chief of Police” means either the Winchester Chief of Police or his designee.

Section 3. REQUIREMENTS

3.1 No person(s) shall engage in solicitation or canvassing in or upon any residential property in the Town of Winchester without first receiving a registration certificate from the Chief of Police as required by this Chapter. Immediately upon gaining access to any residential property, each solicitor or canvasser must do the following:

- (a) Inform the occupant that he or she has registered with the Town, show the occupant the registration certificate and make it available for inspection; and

- (b) Inform the occupant of the nature and purpose of his or her business and, if he or she is representing an organization, the name of that organization.

3.2 Persons engaged in solicitation or canvassing shall carry such registration certificate while so engaged and shall produce such certificate upon the request of a police officer of the Town of Winchester. Each person engaged in solicitation or canvassing in or upon any residential premises shall immediately and peacefully leave such premises upon the request of any occupant.

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.

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 or she is so engaged.

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 General Laws Chapters 93, 93A and 255D.

Section 4. REGISTRATION

4.1 Persons seeking registration certificates in accordance with this by-law shall apply in person at the Winchester Police Department between the hours of 9:00 a.m. and 5:00 p.m., Monday-Friday. Applicants shall be required to fill out an application form provided by the Town, signed under penalties of perjury. Applicants must submit the required fee along with the form.

4.2 The form shall require that each applicant shall provide the following information:

- (a) Personal Information, Applicant's Full Name, Residential Address and Phone Numbers, Date of birth; and Valid driver's license or other government-issued photo identification.
- (b) 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.
- (c) Vehicle Information-If applicant will be travelling through the Town of Winchester by motor vehicle while soliciting or canvassing, applicant must present the vehicle's current and valid registration.

4.3 Fee. Upon filing such application each applicant shall pay a nonrefundable filing fee in the amount of \$25 per applicant.

Section 5. REQUIREMENTS FOR ISSUANCE

5.1 The Chief of Police shall refuse to register an individual whose registration certificate has been revoked for violation of this By-Law within the previous seven (7) year period OR for failure to include all of the required information requested on the application. If the applicant or the organization on whose behalf the applicant intends to solicit is listed with the Better Business Bureau, the Police Department may check the or organization's rating on the Better Business Bureau's website, www.bbb.org, and if the rating is C- or below, the application shall be denied

5.2 The Chief of Police shall conduct a routine criminal background check on all applicants:

- a) All applicants must give written permission for the background check to be conducted using the state's Criminal Offender Records Information (CORI) and Sex Offender Records Information (SORI) database.
- b) Grounds for denial of the registration certificate shall include, but are not limited to, the following:

- 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: burglary, breaking and entering, larceny, robbery, receiving stolen property, assault, fraud, sexual misconduct as specified in General Laws Chapter 265, Sections 13B and 22-24, and Chapter 272, Section 53, unlawfully carrying weapons, or the attempt of any such offense;
- The failure to include any of the information requested in the application.

5.3 Within ten (10) business days of the filing of a complete application, the Chief of Police shall either: approve such application and cause the certificate of registration to be issued; or deny such application, stating in writing the reason(s) for such denial. If the Chief of Police fails to so act within ten (10) business days, the applicant may appeal to the Board of Selectmen. If applicant does not receive a response by the Chief of Police or the Board of Selectmen within thirty (30) days of submitting a complete application, said application shall be considered approved and the Chief of Police shall provide a registration certificate to the applicant.

Section 6. CONTENTS OF CERTIFICATE

Each certificate of registration shall contain the signature of Chief of Police and shall show the name, address and photograph of the holder of said certificate, the 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 one year 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

10.1 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) 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 Town Clerk receives the appeal. 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 certificates of registration, including registration numbers, and application thereof for a period of seven 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, Section 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 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 or 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, Section 4.
- (g) Anyone 18 years of age or younger.
- (h) Any not-for-profit entity distributing leave-behind literature at residential properties and not conducting face-to-face solicitations.

Section 13. SEVERABILITY

If any provision of this by-law shall be declared invalid, the remainder shall continue in full force and effect.

Section 14. PENALTY

This by-law may be enforced through the provisions of General Laws c. 40, Section 21D, which provides for the non-criminal disposition of by-laws violations. 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 Chief of Police.

(Board of Selectmen)

MOTION:

MOVED AND SECONDED that the Town 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:

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

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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.

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may check the or organization's rating on the Better Business Bureau's website, www.bbb.org, and if the rating is C- or below, the application shall be denied

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- The failure to include any of the information requested in the application including a background check.

5.3 Within ten (10) business days of the filing of a complete application, the Chief of Police shall either: approve such application and cause the certificate of registration to be issued; or deny such application, stating in writing the reason(s) for such denial. If the Chief of Police fails to so act within ten (10) business days, the applicant may appeal to the Board of Selectmen. If applicant does not receive a response by the Chief of Police or the Board of Selectmen within thirty (30) days of submitting a complete application, said application shall be considered approved and the Chief of Police shall provide a registration certificate to the applicant.

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- (d) Any person involved in the dissemination of political or religious materials or speech or any other non-commercial activity protected by the United States or Massachusetts Constitutions.
- (e) 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, Section 4.
- (f) Anyone 18 years of age or younger.
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(Board of Selectmen)

BACKGROUND:

Versions of this by-law have been proposed at prior Town Meetings in order to provide a means for conducting background checks on certain kinds of solicitors and canvassers operating in the Town. A working group has edited this by-law with recommendations from the 2017 Spring Town Meeting.

Changes from the original motion:

Section 5 Requirements for Issuance

5.2 b) 2nd bullet point

Old language

- The failure to include any of the information requested in the application.

New language

- The failure to include any of the information requested in the application including a background check.

Section 10. Appeal

10.1 Any applicant aggrieved by the action of the Chief of Police in denying such application or in revoking such certificate or registration may appeal in writing to the Board of Selectmen within seven (7) 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 Town Clerk receives the appeal. If the Board of Selectmen fails to render a decision within thirty (30) days, the action of the Chief of Police shall be deemed upheld.

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

New language: If the Board of Selectmen fails to render a decision within thirty (30) days, the Town Manager may render a decision within seven (7) days after the expiration of the appeal period with the Board of Selectmen.

Section 12. Exceptions

12 a) Any person duly licensed under the Massachusetts General Laws Chapter 101.

Exception a) shall be stricken

As a result of Exception a) being stricken:

- Exception b) become relabeled as exception a)
- Exception c) become relabeled as exception b)
- Exception d) become relabeled as exception c)
- Exception e) become relabeled as exception d)
- Exception f) become relabeled as exception e)
- Exception g) become relabeled as exception f) and
- Exception h) become relabeled as exception g)

Section 12. Exceptions

12 h)

Old language

h) Any not-for profit entity distributing leave-behind literature at residential properties and not conducting face-to-face solicitations.

New language

g) Any person or entity distributing leave-behind literature at residential properties and not conducting face-to-face solicitations.

Majority Vote Required