

Article 2 - Door to Door Solicitation and Canvassing

SOLICITORS AND PEDDLERS

PURPOSE:

It is the purpose of this by-law to regulate persons or organizations engaged in soliciting or peddling in the Town of Rutland through the issuance of licenses and imposition of other limitations on such conduct for the purpose of protecting the Town's residents from disruption of the peaceful enjoyment of their residences and from crime and fraud, and further, to allow reasonable access to residents in their homes by persons or organizations who wish to engage in commercial solicitation.

SECTION ONE: DEFINITION

A solicitor or peddler is defined as any individual, whether a resident of the Town of Rutland or not, traveling either by foot, motor vehicle, or any other type of conveyance from place to place, house to house, taking or attempting to take orders for sale of goods, wares, merchandise, personal property of any nature for immediate or future delivery or for services to be furnished or performed immediately or in the future whether or not he or she collects advance payments on such sales.

SECTION TWO: LICENSE REQUIRED

It shall be unlawful for any solicitor or peddler as defined in Section One of this by-law to engage in such business in the Town of Rutland without first obtaining a license in compliance with the provisions of this by-law. Any person who is not properly licensed under this by-law shall be ordered to immediately cease and desist all solicitation in the town until they attain a proper license.

SECTION THREE: LICENSE EXEMPTION

Nothing in this by-law shall be construed to impose any license requirement or otherwise restrict or in any way regulate any activity for non-commercial purposes, including but not limited to any activity for religious, charitable, civic or political purposes, regardless of whether such activity includes acts that would otherwise constitute soliciting.

SECTION FOUR: APPLICATION & FEE

- A. Each individual applicant for a license under this by-law shall submit to the Chief of Police or his/her designee an application along with a fee of \$50.00 (per individual applicant) payable to the Town of Rutland which will be used to cover the cost of investigating the facts stated in the application.
- B. Each applicant must complete a sworn application in writing at least 10 working days prior to the requested starting date for solicitation, on a form provided by the Police Department. Said form shall include the following information:
 - a. Name, physical description, and date of birth;
 - b. Social security number of the applicant;
 - c. Permanent home address as well as full local address of the applicant;
 - d. A brief description of the nature of the business and/or goods to be sold;
 - e. If employed, name and address of employer, including credentials which establish the exact relationship;
 - f. The length of time for which the license is desired (not to exceed one year);
 - g. Names of manufacturer, of source of merchandise, proposed method of delivery;
 - h. Two photographs of the applicant, taken within the past 60 days prior to filing of the application, showing only the head and shoulders of the applicant in a clear and distinguishing manner;
 - i. A statement as to whether or not the applicant has been convicted of any crime listed in Section Five of the By-law or is a Level 2 or Level 3 Sex Offender required to register with the Massachusetts Sex Offenders Registry Board.

SECTION FIVE: INVESTIGATION & ISSUANCE

- A. If after an investigation into the facts contained in the license application the Police Chief is satisfied the applicant is of suitable character, the Police Chief, or his designee shall grant the required license.
- B. The Police Chief or his designee shall refuse to issue a license to any organization or individual whose license have been revoked for violation to this by-law within the previous two-year period or who has been convicted of murder/manslaughter, rape, robbery, arson, burglary/breaking and entering, felony assault, or larceny over \$250, as such persons pose a substantial degree of dangerousness to minors and other persons vulnerable to becoming victims of the violent crimes so listed. The Police Chief shall also refuse to grant a license to a person who is a sex offender required to register with the Massachusetts Sex Offenders Registry Board and who is finally classified as Level 2 or Level 3 Sex Offender, as such persons have been found to have a moderate to high risk of re-offense and pose a substantial degree of dangerousness to minors and other persons vulnerable to becoming victims of sex crimes.

SECTION SIX: IDENTIFICATION CARD

The Police Department, after a review of the information contained in the license application, but in no event more than ten (10) working days after receipt of a fully-completed application, shall issue to each successful applicant an identification card which shall contain the words “Licensed Solicitor”, the individual’s picture, identification and expiration date of the license. Persons engaged in solicitation or peddling as defined in this By-law must display the registration card while soliciting or peddling and present the card to any police officer or person solicited upon request.

SECTION SEVEN: DUTY OF POLICE TO ENFORCE

It shall be the duty of any police officer of the Town to require any person seen soliciting or peddling and who is not known by such officer to be duly license, to produce his or her solicitor’s license and to enforce the provisions of this by-law against any person found to be violating the same.

SECTION EIGHT: SOLICITATION HOURS

A properly licensed solicitor or peddler may solicit between the following hours where there is no sign posted otherwise limiting solicitation or the hours of solicitation and/or where the residence address in not listed on the “Do Not Solicit List” maintained by Town Clerk.

Monday through Friday: 8 a.m. through 5 p.m.

Saturday, Sunday & Holidays: 9 a.m. through 5 p.m.

SECTION NINE: DO NOT SOLICIT LIST

A. Any person or entity who owns or rents property within the Town of Rutland may register such property on a “Do Not Solicit” list. Registration for the “Do Not Solicit List” shall be made as follows:

- a. The “Do Not Solicit” list shall be maintained by the Town Clerk.
- b. The “Do Not Solicit” list shall consist solely of property addresses, and shall include no further identifying information concerning the ownership of each property.
- c. The Tax Assessor shall notify the Town clerk of any change in ownership of property within the Town. The Town Clerk shall remove from the “Do Not Solicit” list any property that has changed ownership.

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B. The Police Chief shall provide a copy of the “Do Not Solicit” list to every applicant to whom a license is issued pursuant to this by-law. Solicitation of any nature at any address identified on the “Do Not Solicit” list shall constitute a violation of this by-law.

SECTION TEN: RECORDS

The Chief of Police shall maintain all pertinent records of licenses issued and violations recorded.

SECTION ELEVEN: ENFORCEMENT AND PENALTIES

- A. The provisions of this by-law may be enforced by the Select Board, or any Police Officer of the Town of Rutland by any available means in law or equity, including but not limited to enforcement by non-criminal disposition pursuant to Section 21D of Chapter 40 of the General Laws and appropriate articles of the General By-laws. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for each violation shall be \$300.00.
- B. Whoever continues to solicit in the town in willful violation of this by-law, by continuing to solicit after being informed by a police officer to cease and desist, may be arrested without a warrant by a police officer in accordance with the provisions of Massachusetts General Laws Chapter 272, § 59 and subject to a penalty of \$300.00.
- C. Notwithstanding the above licensing procedures, no licensee may enter private property after being forbidden to do so either directly by the person in charge of the property or by a conspicuously posted Notice of “No Trespassing” or “No Soliciting”. Such Trespass violations are controlled by Massachusetts General Laws Chapter 266, § 120, which authorizes the arrest (without a warrant) of a person found committing such a trespass in the presence of a police officer.
- D. After investigation by a police office, licenses issued under the provisions of this by-law may be revoked by the Chief of Police or his designee after notice and hearing, provided however, that a license may be suspended immediately, without notice and a hearing, if the public safety or welfare so requires for any of the following causes:
1. Fraud, misrepresentation, or false statement contained in the license application,
 2. Fraud, misrepresentation or false statements made in the course of carrying on the business of solicitation;
 3. Any violation of this by-law;
 4. Conviction of any crime listed in Section Five of this By-law or classification as a Level 2 or Level 3 Sex Offender;

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5. Conducting the business of soliciting or peddling in a unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace to health, safety, or the general welfare of the public, and
6. High-pressure tactics, harassment, or a refusal to accept a refusal as an answer, when verified in writing.

If a license is suspended under the provisions of this section, notice of a hearing with regard to the same shall be given forthwith in accordance with the following subsection.

E. Notice of hearing for revocation or suspension of a license shall be given in writing, setting forth specifically the grounds of the complaint and a time and place of the hearing. Such notice shall be hand delivered to the licensee or forwarded by certified mail to the licensee at his or her last known address at least five days prior to the hearing date.

SECTION TWELVE: EXPIRATION OF LICENSE

All licenses for soliciting in the town are valid only for the particular dates or time period specified thereon, and in no case for longer than one year.

SECTION THIRTEEN: APPEALS

Any person or organization who is denied a license or whose license has been revoked may appeal by filing a written notice of appeal with the Select Board. Such appeal must be filed within five (5) days after receipt of the notice or denial or revocation. The Select Board shall hear the appeal at its next scheduled meeting after the filing of the written notice of appeal, provided, however, that is the Select Board fails to make a determination within thirty (30) days after the filing of the appeal, the license shall be deemed granted or reinstated, as the case may be.

SECTION FOURTEEN: SEVERANCE CLAUSE

The provisions of this by-law are declared to be severable, and if any section, sentence, clause or phrase of this by-law shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining section, sentences, clauses and phrases of this by-law and they shall remain in effect, it being the legislative intent that this by-law shall stand, notwithstanding the invalidity of any part.

Article 3 - Fingerprint-Based Criminal Record Background Checks

Purpose and Scope

This By-law authorizes the Police Department to conduct state and national fingerprint based criminal history checks for individuals applying for specific licenses in Town to enhance public safety, as authorized by Massachusetts General Laws Chapter 6, Section 172B½. To carry out the criminal history checks authorized by this By-law, the Police Department shall be authorized to use state and Federal Bureau of Investigation (“FBI”) records, provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with all applicable law.

The By-law further authorizes the Select Board, in consultation with the Chief of Police, to promulgate regulations to implement this By-law, which may include, but shall not be limited to, establishment of submission deadlines, procedures for making recommendations to the licensing authority or making a licensing as a result of the criminal history check, procedures for assessing, correcting or amending any such record, criteria for fitness determinations, security of information obtained and penalties for failure to comply with this By-law.

Criminal History Check Authorization

The Police Department shall, as authorized by Massachusetts General Laws Chapter 6, Section 172B½, conduct State and Federal Fingerprint Based Criminal History checks for individuals and entities for the following licenses:

- Hawking and Peddling or other Door-to-Door Salespeople
- Dealer of Second-hand Articles
- Pawn Dealers
- Hackney Driver, and
- Ice Cream Truck Vendors
- Mobile Food Vendors

At the time of fingerprinting, the Police Department shall notify the individual being fingerprinted that the fingerprints will be used to check the individual’s criminal history records and obtain the individual’s consent. After the applicant completes a consent form, provides his/her fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this By-law to the Identification Section of the Massachusetts State Police, the

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Massachusetts Department of Criminal Justice Information Services (DCJIS), and/or the FBI or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks for the license applicants specified in this By-law.

The Town authorizes the Massachusetts State Police, the DCJIS and the FBI and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this By-law. The Town authorizes the Police Department to receive and utilize State and FBI records in connection with such background checks, consistent with this By-law and its implementing regulations. In accordance with its implementing regulations, the Police Department shall communicate the results of fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town.

Use of Criminal Record by Licensing Authorities

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this By-law. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed licensed activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination.

Licensing authorities of the Town are hereby authorized to deny an application for any license specified herein and in the implementing regulations, including renewals and transfers of said licenses, from any person who is determined unfit for the license due to information obtained pursuant to this By-law. Factors that shall be considered in making a determination of fitness shall include, but not be limited to, whether the record subject has been convicted of, or is under pending indictment for a crime, that bears upon the subject's ability or fitness to serve in that capacity, including any felony or a misdemeanor that involved force or threat of force, possession of a controlled substance or sex-related offense.

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Challenge

If the applicant wants to challenge the accuracy or completeness of the record, municipal officials must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28, CFR 16.34

Fees

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be one hundred dollars (\$100) for each fingerprinting and criminal history check. A portion of the fee, as specified in Massachusetts General Laws Chapter 6, Section 172B½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

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Added “Challenge” section.*

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