

SECTION 640 DOOR TO DOOR SOLICITORS AND PEDDLERS

(ATM, 5/13/19, Art. 46)

a.) Purpose - It is the purpose of this by-law to regulate persons or organizations engaged in soliciting or peddling in the Town of Wilbraham 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.

b.) Definitions - Solicitor or peddler is defined as any individual, whether a resident of the Town of Wilbraham 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.

c.) License Required - It shall be unlawful for any solicitor or peddler as defined in this by-law to engage in such business in the Town of Wilbraham 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.

d.) 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.

e.) Application and Fee - Each individual applicant for a license under this by-law shall submit in person to the Chief of Police or his/her designee an application along with a fee of \$25.00 (per individual applicant) payable to the Town of Wilbraham which will be used to cover the cost of investigating the facts stated in the application. Each applicant must complete a sworn application in writing at least ten (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:

1. Name and physical description;
2. Date of birth;
3. Permanent home address as well as full local address of the applicant;
4. A brief description of the nature of the business and/or goods to be sold;
5. If employed, name and address of employer, including credentials which establish the exact relationship;
6. The length of time for which the license is desired (not to exceed one year);
7. Names of manufacturer, of source of merchandise, proposed method of delivery;

8. Two photographs of the applicant, taken within the past sixty (60) days prior to filing of the application, showing only the head and shoulders of the applicant in a clear and distinguishing manner; The police department may require that applicants have a digital photo taken of them by the police department at the time the application is filed.

9. A statement as to whether or not the applicant has been convicted of any crime listed in the "Investigation and Issuance" section of this by-law or is a Level 2 or Level 3 Sex Offender required to register with the Massachusetts Sex Offenders Registry Board.

f.) Investigation and Issuance - If after an investigation into the facts contained in the license application the Police Chief is satisfied the applicant is of suitable character consistent with this by-law, the Police Chief, or his designee shall grant the required license. 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 any larceny offense that is a felony, 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. The Town shall not make an adverse determination based on criminal history or sex offender status without first notifying the applicant of the potential adverse determination. The Town shall provide the applicant with information regarding the source of the criminal history or sex offender status. The Town shall identify the part of the history which appears to make the applicant unsuitable. The Town shall afford the applicant the opportunity to dispute the accuracy of the criminal history or sex offender status or otherwise present to the town any mitigating or other circumstances bearing on the history.

g.) 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", 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, authorized enforcing agent, or person solicited upon request.

h.) 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 licensed, 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.

i.) Records - The Chief of Police shall maintain all pertinent records of licenses issued and violations recorded.

j.) Enforcement and Penalties - The provisions of this by-law may be enforced by the Board of Selectmen, Zoning Enforcement Officer, or any Police Officer of the Town of Wilbraham 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.

Whoever continues to solicit in the town in willful violation of this by-law, by continuing to solicit after being informed by an authorized enforcing agent to cease and desist shall be subject to a penalty of \$300.00.

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".

After investigation by a police officer, 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 "Investigation and Issuance" section of this By-law or classification as a Level 2 or Level 3 Sex Offender;
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 or revoked 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.

k.) Appeals and Hearings

1. Denials: Any person or organization who is denied a license may appeal by filing a written notice of appeal with the Board of Selectmen. Such appeal must be filed within five (5) days after receipt of the notice of denial. The Board of Selectmen shall hear the appeal at its next scheduled meeting after the filing of the written notice of appeal. If the notice of appeal is received by the selectmen less than 72 hours before their next meeting, the appeal may be scheduled for the following meeting. Saturdays, Sundays, and legal holidays shall not count towards this 72 hour period. If the Board of Selectmen fails to make a determination regarding a denial of a license within thirty (30) days after receiving the notice of appeal, the license shall be deemed granted.
2. Suspension or Revocation: Notice of hearing for revocation or suspension of a license shall be given forthwith 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. If the Board of Selectmen fails to make a determination regarding a suspension or revocation of a license within thirty (30) days after the licensee receives a notice, the license shall be deemed reinstated.

l.) Expiration of License - All licenses for soliciting in the town are valid only for the particular dates specified thereon, and in no case for longer than one year.

m.) 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.