

Motion under ARTICLE 39 Selectmen

Moved: That the Town amend the Town Bylaws by inserting a new bylaw, Article 23 as follows, to take effect 90 days after it's passage:

SOLICITORS AND PEDDLERS

This by-law shall take effect 90 days after its passage.

PURPOSE:

It is the purpose of this by-law to regulate persons or organizations engaged in soliciting or peddling in the Town of Lincoln 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 Lincoln 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 and 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 Lincoln 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 \$25.00 (per individual applicant) payable to the Town of Lincoln 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 90 days);

- 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 requested license.

B. The Police Chief or his designee shall refuse to issue a license to any organization or individual whose license has been revoked for violation of 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 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.

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 is not listed on the "Do Not Solicit List" maintained by Town Clerk:

Monday through Friday:	8 a.m. through 9 p.m.
Saturday, Sunday & Holidays:	9 a.m. through 9 p.m.

SECTION NINE: DO NOT SOLICIT LIST

A. Any person or entity who owns or rents property within the Town of Lincoln 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 which has changed ownership.

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 Board of Selectmen, or any Police Officer of the Town of Lincoln by any available means in law or equity, including but not limited to enforcement by noncriminal disposition pursuant to Section 21D of Chapter 40 of the General Laws and Article XVI 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 Mass. Gen. Laws ch. 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 Mass. Gen. Laws ch. 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 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 Section Five of this By-law or classification as a Level 2 or Level 3 Sex Offender;
5. Conducting the business of soliciting or peddling in an 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 90 days.

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 Board of Selectmen. Such appeal must be filed within five (5) days after receipt of the notice or denial or revocation. The Board of Selectmen shall hear the appeal at its next scheduled meeting after the filing of the written notice of appeal, provided, however, that if the Board of Selectmen 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 sections, 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.