

Section 3.1.17

Hawkers and Peddlers; Door-to-Door Sales.

Purpose

This bylaw seeks to regulate the hawking, peddling and solicitation of goods within the Town through the issuance of licenses and imposition of other limitations on such conduct for the purpose of protecting the Town's residents from the disruption of peaceful enjoyment of their residences and from crime and fraud, and further, to allow reasonable access to residents by persons or organizations who wish to lawfully engage in commercial solicitation. This bylaw also seeks to provide residents the ability to verify the identity of those that are legitimately conducting business and to allow those residents who wish to not be interrupted by such sales a mechanism to avoid such encounters.

Definitions

Door-to-Door Sales: The in-person solicitation or sales of goods or services for present or future delivery, including but not limited to magazine subscriptions and financial contributions, by entry upon residential property, including multifamily or duplex residential property, or by soliciting persons located on residential property from a street, sidewalk or other adjacent property, without the prior invitation of the person to be solicited.

Solicitor/Hawker/Peddler: Any person, either principal or agent, who goes from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or exposing therefor, any goods, wares, merchandise, or personal property of any nature, either on foot, or on/from any animal or vehicle, 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.

No Solicitation List: A list of residential addresses in the Town, organized alphabetically by street name, indicating those residential properties placed on the list at the request of the owner or occupant indicating that he or she does not want sales agents to enter his or her property. There shall be no names or other identifiers on this list.

Permit to Solicit and Sell: A permit, issued by the Chief of Police, allowing for the solicitation of contributions or offering for sale of magazine subscriptions or any goods or services of any kind for present or future delivery within the Town of Bourne, as regulated by this bylaw.

Sales Organization: Any entity engaged in the supervision, recruitment, retention or employment of a salesperson or salespersons, including any person or representative thereof.

Salesperson: Any person engaged in door-to-door sales of goods or services for present or future delivery.

General Regulations

No person, organization, hawker or peddler, shall solicit contributions or offer for sale magazine subscriptions or any goods or services of any kind for present or future delivery within the Town of Bourne without first obtaining a Permit to Solicit and Sell issued by the

Chief of Police. The fee for such permit shall be \$50.00 and any such permit shall be valid for a period of no more than one hundred twenty (120) days. Anyone conducting Door-to-Door Sales must obtain a Permit to Solicit and Sell and abide by all Door-To-Door Sales Regulations listed in this bylaw. The door-to-door sales of magazines/periodicals shall be in accordance with MGL Chapter 101 Section 34. The Police Department will maintain, in a manner accessible to the public, a current list of all approved and active permits, including the time period for which the Permit to Solicit and Sell is authorized.

Door-to-Door Sales Regulations

1. No salesperson shall engage in door-to-door sales without first receiving a Town of Bourne Permit to Solicit and Sell and must abide by all other regulations under this bylaw.
2. No sales organization shall allow any salesperson to engage in door-to-door sales who has not applied for and received a Town of Bourne Permit to Solicit and Sell.
3. No salesperson shall solicit sales from a person situated within a residential property included on the "No Solicitation List", including any solicitation of such person from a street, sidewalk, or other adjacent property.
4. Each salesperson shall carry a Town of Bourne Permit to Solicit and Sell and display a company or state issued photo ID at all times while engaged in door-to-door sales and shall display said permit upon request by any police officer or any person present at a residential property where door-to-door sales are solicited.

"No Solicitation" List

A No Solicitation List shall be established and maintained by the Town of Bourne. Residents may submit their property for inclusion on the list without charge by making such request in person at the Police Department or in any other manner as determined by the Chief of Police. Upon approval and issuance of a Town of Bourne Permit to Solicit and Sell, each salesperson shall be provided with the most currently available copy of the No Solicitation List. An updated list shall be made available to the Town Administrator's Office at a regular interval. Once a property is submitted to the town for inclusion on the No Solicitation List, said property shall remain on the list until removal is requested by the current property owner.

Application Requirements

Each hawker/peddler operating in the Town of Bourne, or salesperson performing door-to-door sales activities within the Town of Bourne, must apply individually to the Chief of Police by submitting an application along with a fee of \$50 (per individual applicant). The fee 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. The application shall include the following information: name; physical description; date of birth; permanent residential address of applicant; full local address of applicant (if different from residential address); home telephone number; current cell phone number; temporary local address; sales organization information; sales supervisor identity; nature of the business to be conducted; names of manufacturer of source merchandise; proposed method for delivery; duration (not to exceed 120 days) of the hawking/peddling/door-to-door sales activity (including times and days); and make/model/color/registration number of any vehicle(s) used to transport the sales agent or

sales materials. The application shall be accompanied by the following: a copy of a current government-issued photographic identification; a copy of the sales organization issued credentials (if applicable); and a statement as to whether or not the applicant has been convicted of any crime listed in the "Investigation and Issuance" section of this bylaw or is a Level 2 or Level 3 Sex Offender required to register with the Massachusetts Sex Offenders Registry Board. A digital photograph shall be taken by the police department at the time the application is filed.

Investigation and Issuance

If after an investigation and review of the facts contained in the Permit to Solicit and Sell application, but in no event more than ten (10) working days after receipt of a fully-completed application, the Chief of Police is satisfied the applicant is of suitable character consistent with the bylaw, the applicant shall be granted a Permit to Solicit and Sell. This Permit to Solicit and Sell shall include identifying information of the salesperson, a description of the authorized solicitation, a photograph of the salesperson, and the expiration date of the permit. Persons engaged in solicitation or peddling as defined in this bylaw must display the Permit to Solicit and Sell while soliciting or peddling and present the permit to any police officer, authorized enforcing agent, or person solicited upon request.

The Chief of Police shall refuse to issue a Permit to Solicit and Sell to any organization or individual whose Permit to Solicit and Sell has been revoked for a violation of this bylaw within the previous two-year period or who has been convicted of murder/manslaughter, rape, robbery, arson, burglary/breaking and entering, felony assault, distribution or trafficking of any controlled substance, 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 Chief of Police shall also refuse to grant a Permit to Solicit and Sell to a person who is a sex offender required to register with the Massachusetts Sex Offenders Registry Board and who is finally classified as a 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 sexual 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.

Records

The Chief of Police shall maintain all pertinent records of Permits to Solicit and Sell issued and violations recorded.

Exemptions

Nothing in this bylaw 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 purpose, regardless of whether such activity includes acts that would otherwise constitute soliciting.

Additionally, in accordance with Massachusetts General Law Chapter 101 Section 17, persons and organizations offering for sale newspapers, religious publications, ice, flowering plants, and such flowers, fruit, nuts, and berries as are wild and uncultivated shall be exempt from paying the Permit to Solicit and Sell fee; however, they must still make themselves known to the Chief of Police and abide by all other regulations in this bylaw.

Violations and Penalties

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 Permit to Solicit and Sell and to enforce the provisions of this bylaw against any person found to be violating the same. Police officers shall utilize the Town's Non-Criminal Citation for issuing any violations of this bylaw. Any violation of a provision of this bylaw shall be punished by a fine of three hundred dollars (\$300). Each day on which a violation exists shall be deemed to be a separate offense. Upon the occurrence of a second or subsequent violation of this bylaw by any salesperson, the Chief of Police may request a hearing before the Board of Selectmen for the purpose of determining if two or more violations of this bylaw occurred. If the Board of Selectmen makes such a determination, they may utilize the hearing to decide if the salesperson's or organization's Permit to Solicit and Sell, should be suspended or revoked for a determined period of time. The salesperson and sales organization being reviewed will be provided with fourteen (14) days written notice prior to any such hearing. A Permit to Solicit and Sell may be suspended immediately by the Chief of Police, without notice or hearing, if the public safety or welfare so requires for any of the following: fraud, misrepresentation, or false statement contained in the Permit to Solicit and Sell application; fraud, misrepresentation, or false statements made in the course of carrying on the business of solicitation; any violation of this bylaw; conviction of any crime listed in the "Investigation and Issuance" section of this bylaw or classification as a Level 2 or Level 3 Sex Offender; 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, high-pressure tactics, harassment, or a failure to accept a refusal as an answer. If a Permit to Solicit and Sell 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 to the "Appeals and Hearings" section of this bylaw.

Appeals and Hearings

Any person or organization who is denied a Permit to Solicit and Sell 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 Board of 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 Permit to Solicit and Sell within thirty (30) days after receiving the notice of appeal, the Permit to Solicit and Sell shall be deemed granted.

A notice of hearing for revocation or suspension of a Permit to Solicit and Sell 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 Permit to Solicit and Sell within thirty (30) days after a licensee receives notice, the Permit to Solicit and Sell shall be deemed reinstated.

Expiration

All Permits to Solicit and Sell in the Town are valid only for the particular dates specified thereon, and in no case, for longer than 120 days.

Severability

The invalidity of any portion(s) of this bylaw shall not invalidate any other portion, provision or section thereof.