

By-Laws of the Town of Pembroke
ARTICLE XX. Police Regulations

Section 9.0 Door-to-Door Solicitation

It is the purpose of this by-law to establish registration requirements and specific operational requirements for persons intending to engage in door-to-door canvassing or solicitation in the Town of Pembroke 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 the perpetration of fraud and other crimes, and further, to allow reasonable access to residents in their homes by persons or organizations who wish to communicate either commercial or non-commercial messages. It is framed with deep respect for the principles embodied in the constitutions of the United States and the Commonwealth of Massachusetts and attempts to achieve a workable balance between the right of free speech and the right of privacy. It is intended to be framed narrowly and construed strictly to achieve its purpose by imposing certain restrictions as to the time, place and manner in which solicitation and canvassing are conducted. It is not intended to be applied to political or religious activities for religious, political, newspaper distribution or public policy purposes or other non-commercial purposes, regardless of whether such activities include acts that would otherwise constitute soliciting or canvassing entitled to protection under the First Amendment to the United States Constitution.

A. Statutory authority; purpose.

This article, adopted pursuant to G.L. c. 43B, § 13 and Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts, establishes permit requirements and specific operational requirements for persons intending to engage in door-to-door canvassing or solicitation in the Town of Pembroke, and this article is adopted for the reasons stated above.

B. Definitions.

For the purposes of this article, the following definitions shall apply:

CANVASSING Shall mean and include any one or more of the following door-to-door activities:

- (a) Person-to-person distribution of literature, periodicals, or other printed materials for commercial purposes, but shall not include placing or dropping off printed materials on the premises or mail deliveries;
- (b) Seeking to enlist membership in any organization for commercial purposes; and
- (c) Seeking to present, in person, organizational information for commercial purposes.

CHARITABLE ORGANIZATION Shall be defined as set forth in MGL c. 68, § 18.

COMMERCIAL CO-VENTURER Shall be defined as set forth in MGL c. 68, § 18.

PROFESSIONAL SOLICITOR Shall be defined as set forth in MGL c. 68, § 18.

REGISTERED SOLICITOR Shall mean any person who has obtained a valid certificate of permit from the Town as required by this Bylaw.

RESIDENCE Shall mean and include every individual dwelling unit occupied for residential purposes by one or more persons.

SOLICITING Shall mean and include any one or more of the following activities conducted door-to-door or on a public way:

- (a) Selling, or seeking to obtain orders for the purchase of goods or services, including advertising in any type of publication, for any kind of consideration whatsoever.
- (b) Selling or seeking to obtain prospective customers for application for purchase of insurance of any kind.
- (c) Selling, or seeking to sell, subscriptions to books, magazines, periodicals, newspapers or any other type of publication.
- (d) Seeking to obtain gifts or contributions of money or any valuable thing for the support or benefit of any association, organization, corporation or project wholly or in part for commercial purposes or by a professional solicitor or commercial co-venturer for a charitable or other noncommercial organization.
- (e) Seeking to obtain information on the background, occupation, economic status, political affiliation, attitudes, viewpoints, or the like of the occupants of a residence for the purpose of selling or using such data, wholly or in part, for commercial purposes.

C. Permit.

Every person or organization intending to engage in soliciting or canvassing door-to-door or on a public way in the Town of Pembroke must apply for a certificate of permit at least fourteen (14) business days in advance by filing a permit application form with the Board of Selectmen and Police Chief. At their next regularly scheduled meeting, the Board of Selectmen will act upon the permit application form in a posted Open Meeting. Upon approval of the permit application form, all documentation will be transferred to the Police Chief, along with a current copy of the No Solicitation List.

Organization or individual application forms shall include the following information:

- (1) The name and address of the organization applying for permit and the names and addresses of the organization's principal officers. If the organization is a charitable organization, a copy of the Annual Registration Statement filed with the Attorney General's Division of Public Charities must be provided with this application. Failure to include a copy of the Annual Registration Statement under such circumstances will render the application incomplete and no action will be taken thereon;

If the organization is a professional solicitor or a commercial co-venturer for a charitable organization, a copy of the contract with the charitable organization must be provided with this application. Failure to include a copy of the contract with the charitable organization under such circumstances will render the application incomplete and no action will be taken thereon;

- (2) The name, title and telephone number, IRS or Social Security (optional) number, and valid driver's license or other government-issued photo identification of the person(s) filing the application form;

- (3) The names and addresses of the person(s), if any, who will be directly supervising the solicitation or canvassing operation in the Town of Pembroke;

(4) A list of the names, addresses, dates of birth of all individuals who will be employed in solicitation or canvassing by the applicant; if less than three years' residence at present address, the address of residence(s) during the past three years;

(5) Period of time for which the certificate of permit is sought. No certificate shall be granted for a period longer than 90 days;

(6) Names of the last three communities, if any, in which the organization has conducted a solicitation or canvassing operation, complete with the dates such solicitation or canvassing operation commenced and concluded; and

(8) Valid driver's license or other government-issued photo identification of all individuals who will be employed in solicitation or canvassing by the applicant; and

(9) Make, model and permit number and state of any vehicle to be used by the applicant while soliciting or canvassing.

(10) Each individual applicant for a certificate of permit shall sign a form authorizing the Chief of Police or his agent to conduct a CORI (Criminal Offender Registry Information) check of the individual and submit fingerprints taken by the Pembroke Police Department.

D. Permit fee.

Each individual or organization applying for a certificate of permit or re-permit shall pay to the Town: 1) an application fee of \$25; 2) a fee of \$5 for the cost of a permit card; and 3) a criminal history check authorization fee of \$60, which shall be used solely for fees and costs associated with the administration of its state and national criminal history records check system.

E. Permit cards.

(a) The Police Chief, after a review, but in no event more than fourteen (14) business days after receipt of a fully-completed application, shall furnish each person with a permit card which shall contain the following information:

(1) The name of the person;

(2) A recent photograph of the person;

(3) The name of the organization, if any, which the person represents;

(4) A statement that the person has registered with the Town of Pembroke Police Department but that said permit does not constitute endorsement of any individual or organization; and

(5) The specific dates or period of time covered by the permit.

(b) Persons engaged in soliciting or canvassing, as defined by this Bylaw, must carry the permit card at all times while soliciting or canvassing and must present said card to any person solicited or canvassed or, upon request, to any police officer.

(c) Permit cards are valid only for the specific dates or time period specified thereon and in no case for longer than 90 days. Each such permit card shall state thereon the date upon which the permit expires. Upon the date so stated, the permit shall automatically expire. This provision, however, shall not bar an individual and/or organization from seeking and obtaining permit cards for successive ninety-day periods upon reapplication using the same process as that used for the initial application process.

(d) The Police Chief shall refuse a permit card to an organization or individual whose permit has been revoked within the previous two-year period for violation of any provision of this By-law or to any individual who has been convicted of murder/manslaughter, rape, robbery, arson, burglary/breaking and entering, or felony assault, as such persons pose a substantial degree of dangerousness to minors, senior citizens, and other persons vulnerable to becoming victims of the violent crimes so listed. The Police Chief shall also refuse to issue a permit card to any person who is a sex offender required to register with the 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, senior citizens, and other persons vulnerable to becoming victims of sex crimes.

F. Exceptions.

The provisions of this By-Law shall not apply to the following persons:

(a) Any officer or employee of the Town, county, state, federal government, or any subdivision thereof when on official government business.

(b) Any solicitor or canvasser under the age of 18 years selling goods or periodicals for a commercial purpose under the provisions of G.L. c. 101, § 34.

(c) Route salesmen or other persons having established customers to whom they make periodic deliveries from calling upon such customers or from making calls upon prospective customers, including but not limited to news carriers.

(d) Any persons engaged in the pursuit of soliciting for charitable, benevolent, fraternal, religious, political, or other non-commercial purposes, regardless of whether such activity includes acts that would otherwise constitute soliciting or canvassing.

(e) Any person exempted under G.L. c. 149, §69

G. Duties of persons going door-to-door.

(a) Upon approaching any residential premises in the Town of Pembroke, every solicitor, canvasser or other person must first examine any notices or signs posted on the property prohibiting solicitation or other activities. If such a notice or sign is posted, the solicitor, canvasser or other person must refrain from entering the property, and if the notice or sign was not visible until the property was entered, the solicitor, canvasser or other person must then immediately leave the premises.

(b) No solicitor, canvasser or other person shall enter any premises which are identified on the "No Solicitation" list, described below, on file at the Pembroke Police Department.

(c) Any solicitor, canvasser or other person who has gained entrance to any residence, whether invited or not, shall immediately and peacefully leave the premises when requested to do so by the occupant.

(d) Immediately upon gaining entrance to any residence, each solicitor or canvasser, as defined by this Bylaw, must do the following:

(1) Present his/her permit card for inspection by the occupant;

- (2) Request that the occupant read the permit card; and
- (3) Inform the occupant in clear language of the nature and purpose of his/her business and, if he/she is representing an organization, the name and nature of that organization.

H. Restrictions on methods of solicitation, canvassing or other door-to-door activities.

It shall be unlawful for a solicitor, canvasser or other person to do any of the following:

(a) Falsely represent, directly or by implication, that the solicitation, canvassing or other activity is being done on behalf of a governmental organization or on behalf of any municipal employee or elected official.

(b) Solicit, canvass or conduct any other activity at any residence where there is a posted notice or sign prohibiting the same, without express prior permission of an occupant.

(c) Solicit, canvass or conduct any other activity at any residence which is on the "no solicitation" list described below, without the express prior permission of an occupant.

(d) Solicit, canvass or conduct any other activity at any residence, without express prior permission of an occupant, before 9:00 a.m. or after 8:00 p.m. where there is no sign or notice posted on the property which otherwise limits solicitation or the hours of solicitation or such other activities.

(e) Utilize any form of endorsement from any department head currently employed by the Town of Pembroke.

(f) Solicit, canvass or conduct any other activity at any residence or on any public way in a threatening, abusive, or illegal fashion.

I. "No Solicitation" list.

(a) Any person, firm or corporation who is the owner or lawful tenant or occupant of any private residence within the Town of Pembroke may prohibit the practice of going in or upon the private residence of such owner or occupant, by uninvited solicitors or canvassers, as defined in this article, by placing a sign upon its property which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such residential property.

(b) Any person, firm or corporation who is the owner or lawful tenant or occupant of any private residence within the Town of Pembroke may prohibit the practice of going in or upon the private residential property and/or the private residence of such owner or occupant, by solicitors or canvassers, as defined in this article, by registering its property in accordance with Subsection (c) of this section and by posting upon each such registered residential property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such residential property.

(c) The No Solicitation List registration authorized by Subsection (b) hereof shall be made by filing a "No Solicitation Permit Form" at the office of the Board of Selectmen, on a form furnished by the Town Administrator for such purpose. The form shall be completed by the property owner or occupant, and it shall contain the following information:

- (1) Name of the person filing the form and capacity to sign, e.g., owner, tenant, occupant.

(2) Residential address(es) for which the "no solicitation" restriction shall apply.

(c) A resident of the Town of Pembroke may mail said form to the Town Hall, fill it out at the Town Hall or request inclusion on the "no solicitation" list by telephone call to the Selectmen's Office. In the case of telephone request, the office shall verify that the person calling resides at the address identified by making a return telephone call to the telephone number provided for said residence.

(d) All residences requesting inclusion on the "no solicitation" list shall be placed on said list by the Board of Selectmen's staff.

(e) The Police Chief shall receive an updated list with each permit approved by the Board of Selectmen and shall supply every applicant for a certificate of permit with a copy of said list.

J. Penalties.

(a) Any person or organization who shall violate any of the provisions of this Bylaw or shall violate any applicable provisions of state or federal laws governing soliciting or canvassing, including, but not limited to, MGL c. 68, shall be subject to a fine of \$300 for each offense. Each day that a person solicits or canvasses without a license shall constitute a separate offense.

(b) Any person or organization who for himself, itself or through its agents servants or employees is found, after investigation by a police officer, to have 1) violated any provision of Subsection **H** or **I**, or any applicable state or federal laws governing soliciting or canvassing, including but not limited to MGL c. 68; 2) knowingly provided false information on the permit application required by Subsection **C** of this bylaw; or 3) conducted himself or itself in a threatening, abusive or illegal fashion, shall have his/her/its permit revoked by the Police Chief by written notice delivered to the holder of the permit card in person, or sent to the holder by certified mail at the address set forth in the application.

K. Appeals.

Any person or organization who is denied permit or whose permit has been revoked by the Police Chief may appeal by filing a written notice of appeal with the Pembroke Board of Selectmen. Such appeal must be filed in the Town Clerk's office within five days after receipt of the notice of denial or revocation. The Selectmen shall hear the appeal at its next regularly scheduled meeting after the filing of said written notice of appeal; provided, however, that if the Selectmen fails to make a determination within 30 days after the filing of the appeal, the permit shall be deemed granted or reinstated as the case may be.

L. Severability.

If any portion of this Bylaw should be determined by a court of competent jurisdiction to be invalid, such invalidity shall not affect the validity of this Bylaw as a whole or any other portion hereof.

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Section 9.1 Criminal History Check Authorization

A. Purpose and Scope

This Bylaw 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.

B. Criminal History Check Authorization

The Pembroke 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
- Manager of Alcohol Beverage License
- Owner or Operator of Public Conveyance
- Dealer of Second-hand Articles
- Pawn Dealers
- Hackney Drivers, and
- Ice Cream Truck/Food Vendors

Said license and permit applicants, and where applicable employees or volunteers seeking to engage in the above employment, shall submit to, prior to action on their license, fingerprinting by the Pembroke Police Department along with a fee of sixty dollars (\$60).

Upon receipt of the appropriate fee, the Pembroke 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 to the Identification Section of the Massachusetts State Police, the Federal Bureau of Investigation (FBI), and/or the Department of Criminal Justice Information System (DCJIS), 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 applicants specified in this Bylaw.

The Town authorizes the Massachusetts State Police, the DCIS 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 authority within the Town.

C. Use of Criminal Record by Licensing Authorities

Licensing and permitting 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 applications specified in this by-law. A Town licensing or permitting authority may deny an application for a permit/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 and permitting 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. In rendering a fitness determination, factors considered by the Pembroke Police Department shall include, but not be limited to, whether the record subject has been convicted of (or is under pending indictment for) a crime, which bears upon his/her ability or fitness to serve in that capacity, any felony or misdemeanor, which involved force or threat of force, controlled substances or was a sex-related offense. A record subject may request and receive a copy of his/her criminal history record from the Pembroke Police Department. Should the record subject seek to amend or correct his/her record, he/she must contact the Department of Criminal Justice Information System (DCJIS) for a state record or the FBI for records from other jurisdictions maintained in its file.

This Bylaw further authorizes the Pembroke Police Department to promulgate rules or regulations to implement this Bylaw, 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.

D. Appointments

All license applicants must make an appointment for fingerprinting through the dispatch officer in person or by phone at (781) 293-6363.

E. Fees

The fee charged to the applicant by the Pembroke Police Department for the purpose of enforcing this section shall be sixty dollars (\$60) for each fingerprinting and criminal history check. A portion of the fee, as specified in Chapter 6, Section 172B½ of the Massachusetts General Laws, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Pembroke Police Department for costs associated with the administration of the fingerprint system.

F. Effective Date

This Bylaw shall take effect after compliance with Massachusetts General Laws Chapter 40, Section 32.