

Article III. Solicitors and Canvassers

When a solicitor receives a license, the solicitor will be given a list of resident addresses they cannot solicit. If a business does solicit a residence on the Do Not Knock List, the solicitor will be fined and will not be allowed to solicit any homes in Tewksbury for a period of one year. (Art. 16 STM 2021)

12.04.090 License required.

It shall be unlawful for any solicitor or canvasser as defined in Section 12.04.100 of this chapter to engage in such business within the corporate limits of “the Town” without first obtaining a license in compliance with the provisions of this chapter. Any person who is not properly licensed under this bylaw shall be ordered to immediately cease and desist all solicitation in the Town until they attain a proper license. Whoever continues to solicit without a proper license and after being prohibited to do so by the Town Clerk or a Tewksbury Police Officer, shall be punished by a fine of not more than three hundred dollars (\$300) for each violation. A person who commits such a violation(s) shall appear in court upon summons, except as provided under Section 12.04.180. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.100 Definition.

A canvasser or solicitor is defined as any individual, whether resident of the Town or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for such services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or herself, or for another person, firm or corporation, hires, leases, uses, or occupies any building, structure, tent, railroad box car, boat, hotel room, lodging house, apartment, shop or any other place within the Town for the sole purpose of exhibiting samples and taking orders for future delivery. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.110 License application Requirements.

An applicant for a license under this bylaw shall file with the Town Clerk a sworn application (in duplicate) in writing at least ten (10) working days prior to his or her requested starting date for solicitation on a form to be furnished by the Town Clerk, which shall give the following information:

- (a) Name and Physical Description of the applicant;
- (b) Permanent home address and full local address of the applicant;
- (c) A brief description of the nature of the business and the goods to be sold;
- (d) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (e) The length of time for which the right to do business is desired;
- (f) The place where goods or property proposes to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery.
- (g) Two photographs of the applicant, taken within 60 days immediately prior to the date of filing of the application, which picture shall be 2” by 2” showing the head and shoulders of the applicant in a clear and distinguishing manner. One picture will be retained by the Town Clerk and the other will be laminated onto the Solicitor Identification Card.
- (h) The names of at least two reliable property owners of the Town who will certify as to the applicant’s good character and business respectability, or, in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to properly evaluate each character and business responsibility.
- (i) A statement as to whether or not the applicant has been convicted of any crime, felony, mis-demeanor, or violation of any municipal bylaw, rule or regulation, the nature of the offense and the punishment or penalty assessed therefore.

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be one hundred dollars (\$100). This fee may be waived for nonprofit organizations. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part), Art 27, ATM May 2017)

12.04.120 License Investigation and issuance.

- (a) Upon receipt of a license application under this bylaw, the original shall be referred to as the “Chief”, who shall cause such investigation of the applicant to determine the following facts:
 - (1) Whether or not fraud, misrepresentation, or false statements have been made in the application for license.
 - (2) Whether or not the applicant has been convicted of any crime or misdemeanor involving moral turpitude.
- (b) If as a result of such investigation, the Police Chief or the Chief’s designee shall find that either paragraph (a)(1) or (a)(2) is answered in the affirmative, the Chief shall endorse on such application the reasons therefore, and return the same application to the Town Clerk, who shall notify the applicant that the application is disapproved, and that no license will be issued.
- (c) If as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief or his designee shall endorse on the application approved, and forward it to the Town Clerk. Upon payment of the prescribed license fee to the Town Clerk, the applicant may pick up his or her license and Solicitation Identification Card. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued, and the kind of goods to be sold there under, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such soliciting or canvassing. The Town Clerk shall keep a permanent record of all licenses issued. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.130 License fees.

- (a) The license fee which shall be charged by the Town Clerk for such license shall be \$5.00 per day, \$25.00 per week, \$50.00 per month, or \$100.00 per year. Fees shall be waived for non-profit organizations upon written request of the applicant and verification by the Town.
- (b) The annual fees herein provided shall be assessed on a calendar year basis and on or after July first, the amount of such fee for annual license shall be one-half the amount stipulated above for the remainder of the year.
- (c) None of the license fees provided for by this bylaw shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, he or she may apply to the Town Clerk for an adjustment of the fee, so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at, or within six months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his or her method of business and the gross volume of business and such other information as the Town Clerk may deem necessary, in order to determine the extent, if any, of such undue burden on such commerce. The Town Clerk shall then conduct an investigation, comparing applicant’s business with other businesses of like nature and shall make findings of fact from which the Town Clerk shall determine whether the fee fixed by this bylaw is unfair, unreasonable or discriminatory as to applicant’s business and shall fix as the license fee for the applicant, an amount that is fair, reasonable, and nondiscriminatory, or, if the fee has already been paid, shall order a refund of the amount over and above the fee so fixed. In fixing the fee to be charged, the Town Clerk shall have the power to base the fee upon a percentage of gross sales, or any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fees as prescribed by Section 12.04.130(a) of this chapter. Should the Town Clerk determine the gross sales measure of the fee to be the fair basis, he/she may require the applicant to submit, either at the time of termination of applicant’s business in the Town or at the end of each three-month period, a sworn statement of the gross sales and pay the amount of fee therefore, provided that no additional fee during any one calendar year shall be required after the licensee shall have paid an amount equal to the annual license as prescribed in Section 12.04.130(a). (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.140 Bond required when.

Every applicant, not a resident of the Town, or who being a resident of the Town, but representing a firm whose principal place of business is located outside the Commonwealth of Massachusetts, shall file with the Town Clerk a surety bond, running to the Town in the amount of \$1,000 with surety acceptable to and approved by the Town Treasurer, conditioned that the said applicant shall comply fully with all the provisions of the By-Laws of the Town and the statutes of the Commonwealth of Massachusetts, regulating and concerning the business of a solicitor and guaranteeing to any resident of the Town that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor and further guaranteeing to any citizen of the town doing business with said solicitor, that the property purchased will be delivered according to the representations of said solicitor. Action on such bond may be brought in the name of the Town to the use or benefit of the aggrieved person. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.150 Solicitation Identification Card issuance.

The Town Clerk shall issue to each licensee at the time of delivery of his or her license, an identification card which shall contain the words "Licensed Solicitor", the individual's picture and period for which the license is issued, and the number of the license in letters and figures easily discernible from a distance of ten feet. Such identification card shall, during the time such licensee is engaged in soliciting, be worn constantly by the licensee on the front of his or her outer garment in such a way as to be conspicuous. A Special Identification Card to be worn in compliance with this section will be issued by the Town Clerk for solicitors of nonprofit organizations that are from the Town of Tewksbury. These identification cards will consist of information the Town Clerk deems to be necessary. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.160 Exhibition of license required.

Solicitors and Canvassers are required to exhibit their licenses at the request of any resident. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.170 Enforcement authority.

It shall be the duty of any police officer of the Town to require any person seen soliciting or canvassing who is not known by such officer to be duly licensed, to produce his or her solicitor's or canvasser's license and to enforce the provisions of this bylaw against any person found to be violating the same. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.180 Trespass prohibited.

Whoever having a proper license issued by the Town without right, enters or remains in or upon private residences in the Town for the purposes of distributing, soliciting, or advertising material of a commercial nature after being forbidden to do so by the person who has lawful control of said premises, whether directly or by notice posted in a conspicuous place to mean; on a mailbox at the end of the driveway, a free standing posting at the edge of the driveway or property adjacent to the door in view from the street, or attached to the front corner of a residence by the driveway in clear view from the street, shall be punished by a fine or not more than one hundred (\$100) dollars or by imprisonment for not more than thirty (30) days, or both such fine and imprisonment. A person who is found committing such trespass in the presence of a Police Officer, may be arrested without a warrant. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.190 Purchase and display of trespass notices.

Notices that state, Solicitors No Trespassing Town ByLaw, are to be purchased at the Town Clerks office for a fee consistent with the cost to provide such notices.

After purchase they are to be attached to one of the conspicuous locations mentioned by the person(s) in lawful control of said premises. Nothing in this bylaw will prohibit a person from posting their property in accordance to the Massachusetts General Laws, Chapter 266, Section 120. Trespassing After Notice or preclude a Police Officer from using this statute when warranted. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.200 Solicitation hours.

A canvasser or solicitor who has a proper license issued by the Town may solicit between the following hours, provided they comply with all the provisions of this bylaw:

Monday thru Friday 9:00 a.m. to 7:00 p.m.
Saturday & Sunday 10:00 a.m. to 5:00 p.m.

(Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.210 Keeping of records required.

The Chief shall report to the Town Clerk all convictions for violation of this bylaw, and the Town Clerk shall maintain a permanent record for each license issued and record the reports of violation therein. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.220 Revocation of license when.

- (a) Licenses issued under the provision of this bylaw may be revoked by the Town Clerk after notice and hearing for any of the following causes:
 - (1) Fraud, misrepresentation, or false statement contained in the application for license;
 - (2) Fraud, misrepresentation or false statement made in the course of carrying on a business as solicitor or as canvasser;
 - (3) Any violation of the bylaw codified in this chapter;
 - (4) Conviction of any crime or misdemeanor involving moral turpitude; or
 - (5) Conducting the business of soliciting, or of canvassing, in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.
 - (6) High pressure tactics, harassment, or refusal to accept no as an answer, which has been submitted in writing to the offended party.
- (b) Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be forwarded by certified mail to the licensee at his or her last known address at least five (5) days prior to the date set for hearing. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.230 Appeal.

Any person aggrieved by the action of the Chief or the Town Clerk in the denial of a license as provided in Section 12.04.120 of this chapter, or the action of the Town Clerk in the assessing of the fee as provided in subsection 12.04.130(c) of this chapter, shall have the right of appeal to the Board of Selectmen of the Town.

Such appeal shall be taken by filing with the Board of Selectmen within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The Board of Selectmen shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in Section 12.04.220 of this article for notice of hearing on revocation. The decision and order of the Board of Selectmen on such appeal shall be final. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))

12.04.240 License expiration.

All annual licenses issued under the provision of this bylaw shall expire on the 31st of December in the year when issued. All other licenses shall expire on the date specified in the license. (Art. 13 (part), STM 1990: By-Laws Art. VI § 10 (part))