



CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

November 7, 1994

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 18, regarding door-to-door solicitation ordinance proposal, received from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mev
attachment



CITY OF CAMBRIDGE

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November 3, 1994

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Door-to-door solicitation ordinance proposal;
Council Order #41 dated 6/6/94

Dear Mr. Healy:

The City Council requested that the Law Department review a proposed ordinance regulating door-to-door solicitations that was drafted by the License Commission. Attached is the ordinance as amended by my office. Suggested additions appear in shaded print, suggested deletions appear with a line through them.

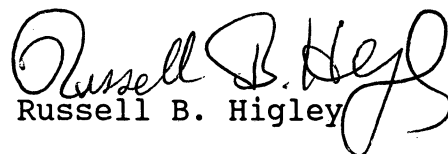
The primary changes suggested are (a) the deletion of language that would have the ordinance apply to charitable solicitations (see Section 2); and (b) making the License Commission the body to whom appeals may be taken from actions of the Police Commissioner, instead of the City Council (see Section 11).

The reason for the recommendation that charitable solicitations not be regulated by the ordinance is that regulations requiring the licensing of charitable solicitors are subject to strict scrutiny under the First Amendment. "Charitable solicitations 'involve a variety of speech interests...that are

within the protection of the First Amendment,' and therefore have not been dealt with as 'purely commercial speech'." Riley v. National Federation of the Blind, 101 L.Ed.2d 669, 683 (1988). In Riley, a licensing requirement for charitable solicitors was struck down under a strictly applied First Amendment analysis that would quite possibly invalidate the ordinance provisions proposed here. Id. at 692-3. Also, it should be noted that the Division of Public Charities regulates charitable solicitations under G.L.c.68, ss.18-35. If the City Council desires to impose local regulation on charitable solicitations, the proposed ordinance should be reworked to impose the fewest possible reasonable restrictions and to be drafted to clearly connect each proposed restriction to the City's public purposes in regulating.

Please contact me if I can be of further assistance.

Very truly yours,


Russell B. Higley

SOLICITATION ORDINANCE. To determine whether the City will vote to adopt the following solicitation Ordinance, and to insert it, as Chapter 5.37, in the "CODE OF ORDINANCES OF CAMBRIDGE", establishing registration requirements and specific operation requirements for all persons intending to engage in door-to-door canvassing or solicitation in the City of Cambridge, as follows:

Section 1 - Purpose: This Ordinance, adopted, establishes registration requirements and specific operation requirements for all persons intending to engage in door-to-door canvassing or solicitation in the City of Cambridge in order to:

1. Protect its citizenry from disruption of the peaceful enjoyment of their residences and from the perpetration of fraud or other crimes; and
2. To allow for reasonable access to residents in their homes by persons or organizations who wish to communicate either commercial or non-commercial messages.

Section 2 - Definition: "Solicitor or Canvasser" is defined as any person who, for himself or for another person, firm, or corporation travels by foot, automobile or any other type of conveyance from place to place, from house to house, or from street to street, taking or attempting to lease or take orders for retail sale of goods, wares, merchandise, or services, including without limiting, the selling, distributing, exposing for sale or soliciting orders for magazines, books, periodicals or other articles of a commercial nature, the contracting of all home improvements, or for services to be performed in the future whether or not such individual has, carries or exposes for retail sale a sample of the subject of such sale or whether he is collecting advance payment on such retail sales, ~~and the soliciting or collecting of monies for charitable and non-charitable purposes.~~

"Residence" shall mean and include every individual dwelling unit occupied for residential purpose by one or more persons.

"Registered Solicitor" shall mean any person who has obtained a valid certificate of registration from the City, as required under this Ordinance.

Section 3 - Exception: The provisions of this Ordinance shall not apply to any person duly licensed under Chapter 101, or to any person exempted under Chapter 101, Chapter 149, Section 69, Chapter 180, Section 4, or to any person exempted by any other General Law, or officers or employees of the City, Country, State or Federal governments when on official business nor shall this Ordinance be construed to prevent 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 to solicit an order for future periodic route deliveries. This Ordinance shall not prevent persons ~~for~~ from making future periodic route deliveries.

Section 4 - Registration: Every person or organization intending to engage in soliciting or canvassing door-to-door in the City of Cambridge must register with the Police Department at least seven (7) days in advance by filing a registration application form with the Police Commissioner or his designee. Such form will be signed under the penalties of perjury and contain the following information:

- A. Name of Applicant.
- B. Address of applicant. Business, local and home address.
- C. Telephone number of applicant. Business and home numbers.
- D. Applicant's social security number.
- E. The length of time for which the right to do business is desired. No registration will be granted for a period longer than 90 days.
- F. A brief description of the nature of the business and the goods to be sold.
- G. The name, home office address and telephone number of the applicant's employer. If self-employed, it shall so state.
- H. A photograph of the applicant, which shall be provided by the applicant, and be 2" X 2", and will show the head and shoulders of the applicant in a clear and distinguishing manner. This provision may be waived by the Police Commissioner or designee.
- I. If operating or being transported by a motor vehicle(s): The year, make model, vehicle identification number, registration number, state of registration and the vehicle's owner and address, for each vehicle, will be provided.
- J. The names of the three most recent communities (if any) in which the applicant has solicited or canvassed door-to-door.
- K. The area of the City for which such soliciting or canvassing is proposed.

In addition, a list of names, addresses, dates of birth, and social security numbers of all individuals who will be employed in canvassing or solicitation and those supervising such individuals ~~or a roster of local non profit canvassers or solicitors will be attached to the application.~~ The Police Commissioner or designee may refuse to register an organization or individual whose registration has been revoked for violation of this Ordinance within the previous two-year period.

Section 5 - Registration Fee: Each applicant for registration or re-registration shall pay a non-refundable fee of \$ 5 to the City at the time of application. A registration fee must be paid for each person who will be engaged in soliciting or canvassing or the supervision of canvassing or soliciting. This fee may be waived at the discretion of the Police Commissioner or designee for non-profit organizations with proof of non-profit standing.

Section 6 - Investigation: Upon receipt of the application, the Police Commissioner or designee shall investigate the applicant's background and reputation. Within seven (7) days of the filing of the application, the Commissioner shall endorse on such application his approval or disapproval. ~~Approval shall not be unreasonably withheld.~~

Section 7 - Registration Cards: The Police Commissioner or designee shall furnish each person engaged in solicitation or canvassing with a registration card which will contain the following information.

- A. Name of person
- B. Recent 2" X 2" photograph supplied by the individual to be registered.
- C. Name of the organization that the person represents.
- D. A statement that the individual has been registered with the Police Department but that registration is not an endorsement of any individual or organization.
- E. Specific dates or period of time covered by the registration.

Section 8 - Notice Regulating Solicitation: Every occupant of a residence ~~or business~~ desiring to secure additional protection, as provided by this Ordinance shall comply with the following requirements:

- A. A Weatherproofed card, approximately 3" X 5" in size shall be exhibited upon or near the main entrance door to the residence or business, indicating the determination by the occupant, as to whether solicitors or canvassers are invited to the residence or business by the following applicable words:

"No Solicitors or Canvassers Invited".

"No Solicitors or Canvassers Invited Before the Hours of
____AM or After the Hour of ____PM.

Further, it shall be unlawful for any canvasser or solicitor to enter the premises of a resident or business who has displayed a "No Trespassing" or "No Soliciting" sign or poster.

Section 9 - Duties of Solicitors:

- A. It shall be the duty of every solicitor or canvasser, upon going onto any residential or business premises in the City of Cambridge, to first examine the notice provided for in Section 8 of this Ordinance, if any is exhibited.

If notice stated "No Solicitors or Canvassers Invited" or words to that effect then the solicitor or canvasser shall immediately and peacefully depart from the premises.

If the notice limits the hours of the solicitation, the solicitor or canvasser shall comply with the limits noted.

- B. Persons engaged in solicitation or canvassing, including supervisors, must carry the registration card at all times and present the card to any person solicited or upon request of a police officer.
- C. Immediately upon gaining entrance to any residence or business, each solicitor, canvasser must do the following:
- i. Present this registration card for inspection by the occupant.
 - ii. Request that the occupant read the registration card.
 - iii. Inform the occupant in clear language of the nature and purpose of his business and, if he is representing an organization, the name and nature of the organization.

- D. Any solicitor or canvasser who has gained entrance to any residence or business, whether invited or not, shall immediately, and peacefully depart from the premises when requested to do so by the occupant.
- E. It shall be the duty of every organization employing solicitors or canvassers to notify the Police Department daily as to what area(s) of the City they will be operating in.

Section 10 - Restrictions on Methods of Solicitation:

- A. No Solicitor or canvasser, licensed or exempted from license, may misrepresent, in any manner, the buyer's right to cancel as stipulated by Chapters 93, 93A and 255D of General Laws.
- B. No solicitor or canvasser, licensed or exempted from license, may use any plan, scheme or ruse which misrepresents the true status or mission of the person making the call in order to gain admission to a prospective buyer's home, office or other establishment with the purpose of making a sale of consumer goods or services.
- C. No solicitor or canvasser, licensed or exempted from license, shall falsely represent, directly or by implication, that the solicitation or canvassing is being done on behalf of a governmental organization.
- D. No solicitor or canvasser, licensed or exempted from license, shall solicit or canvass at any residence without express prior permission of an occupant, before 8:00AM or after 8:30PM where there is no sign posted otherwise limiting solicitation or the hours of solicitation.
- E. No solicitor or canvasser, licensed or exempted from license, shall go upon any residential premises and ring the doorbell or rap or knock upon the door of the residence or create any sound in any manner calculated to attract the attention of the occupant of such residence for the purpose of solicitation or canvassing in defiance of the notice exhibited at the residence in accordance with Section 9 8.

Section 11 - Revocation of License: The Police Commissioner or designee is hereby vested with jurisdiction over the revoking of a registered solicitor or canvasser for any violation of the provisions contained within this Ordinance, or for any solicitor or canvasser who knowingly provides false information on the registration application, or for any other good cause. Any person aggrieved by such revocation may appeal to the City Manager License Commission within 7 business days in writing, and a hearing will be scheduled within 14-30 business days by the City Clerk before the City Council License Commission.

Section 12 - Penalty: Any person or organization violating any of the provisions of this Ordinance shall be subject to a fine of \$ 100.00 for each offense. This penalty may be enforced under the provisions of the non-criminal disposition provisions contained in ~~Chapter 5.36 of the City of Cambridge Ordinances~~ General Laws c.40, s.21D. The following officials shall be enforcing persons: police officers and License Commission inspectors.

Section 13 - Severability: Invalidity of any individual provision of this Ordinance shall not affect the validity of the Ordinance as a whole.

Section 14 - Fees: Any ~~finer~~ fees established by the Ordinance may be changed, from time to time, by an action of the City Council.

Consent Agenda #29 *S-502*

Response to an Awaiting Report Item
No. Eighteen, regarding door-to-door
solicitation ordinance proposal.

*11/14/94 No action taken -
placed on file
Under Rule
Nineteen of the
City Council Rules*

In City Council,

November 7, 1994

*Charter Right
exercised by
Councillor Jorney.*