

LOCAL LAW NO. 3 OF 2019 OF THE INCORPORATED TOWN OF MONROE, NEW YORK TOWN BOARD AMENDING CHAPTER 35 OF THE CODE OF THE TOWN OF MONROE

A LOCAL LAW to amend The Code of the Town of Monroe Chapter 35 to expand the regulations of Peddling and Solicitation.

BE IT ENACTED AS FOLLOWS:

Section 1. Legislative Intent.

A Local Law to amend the Code of the Town of Monroe by amending Chapter 35 entitled "Peddling and Soliciting" pursuant to Municipal Home Rule Law Section 10 et. seq.

This Chapter is authorized by the New York State Constitution Article IX, § 2, the provisions of the New York Municipal Home Rule Law, and the provisions of the Statute of Local Governments.

Section 2. Effect.

Chapter 35 of the Code of the Town of Monroe is hereby amended to read as follows:

Chapter 35: PEDDLING AND SOLICITATION

§ 35-1 Title.

This Chapter amends Chapter 35 of the Town of Monroe Code entitled "Peddling and Soliciting".

§ 35-2 Legislative Purpose and Authority.

Town residents of the Town have an inalienable interest in their personal safety, comfort, well-being, and privacy in their residences as well as their ability to provide and receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce.

This chapter is enacted for the purpose of regulating local activities of itinerant sellers and solicitors of orders for sale in order that the peace, health, safety, welfare and good order of the Town and its inhabitants be preserved.

The Town has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its residents, which includes protecting residents from unwanted, harassing, and disruptive intrusions and solicitations upon residential property. The Town also has a substantial interest in protecting residents from fraudulent, misleading, or otherwise unfair consumer sales practices, deceptive door-to-door solicitations, and criminal activity.

There must be a balance between these substantial interests of the Town and its residents and the effect of this Chapter on any rights of those regulated. Based on the collective experiences derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries and complaints of residents regarding door-to-door and in-home canvassing and solicitation, the experience of its law enforcement officers and those affected by door-to-door and in-home canvassing and solicitation, as well as judicial decisions outlining the boundaries of constitutional protections afforded and denied persons seeking to engage in door-to-door and in-home canvassing and solicitation, the Town adopts this Chapter to promote the Town's substantial interests in: (a) respecting residents' decisions regarding privacy in their residences; (b) protecting persons from criminal conduct; (c) regulating local activities of itinerant sellers and solicitors of orders for sale in order that the peace, health, safety, and welfare of the Town and its inhabitants shall be preserved; (d) providing equal opportunity to advocate for and against religious belief, political position, or charitable activities; and (e) permitting truthful, non-fraudulent, and non-misleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce that does not violate the property rights of any property owner or resident in the Town.

The Town finds that the procedures, rules, and regulations set forth in this Chapter are appropriately and narrowly tailored to preserve and protect the Town interests referred to herein while at the same time balancing the rights of those regulated.

Nothing herein is intended to interfere with or supplant any other requirement of State or Federal law regarding any license, permit, or certificate that a registered solicitor is otherwise required to have or maintain. Nothing in this Chapter shall be construed to preempt any provision of State or Federal Law.

§ 35-3 Definitions.

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

- A. **Advocating:** Speech or conduct intended to inform, promote, or support a political position, or charitable activities.
- B. **Appeals officer:** The Town Board or designee of the Town Board responsible for receiving the information from the Town and appellant regarding the denial or suspension of a certificate and issuing a decision as required by this Chapter.
- C. **Appellant:** The person or entity appealing the denial or suspension of a certificate, either personally as an applicant or registered solicitor, or on behalf of the applicant or registered solicitor.
- D. **Applicant:** An individual who is at least eighteen (18) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a certificate permitting door-to-door solicitation.

- E. **Application form:** A standardized form provided by the Town to an applicant to be completed and submitted as part of registration.
- F. **BCI Report:** An original or copy, dated no older than one hundred eighty (180) days prior to the date of the application, of either: (1) a New York State Bureau of Criminal Identification verified criminal history report personal to the applicant; or (2) verification by the New York State Bureau of Criminal Identification that no criminal history rising to the level of a disqualifying status exists for the applicant.
- G. **Certificate:** A certificate permitting door-to-door solicitation in the Town applied for and issued by the licensing officer pursuant to the terms of this Chapter.
- H. **Charitable activities:** Advocating by persons or entities that either are, or support, a charitable organization.
- I. **Charitable organization:** Includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:
 - 1. That is:
 - a. A benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization;
 - b. For the benefit of a public safety, law enforcement, or firefighter fraternal association; or
 - c. Established for any charitable purpose; and
 - 2. that is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes; and
 - 3. that is registered in the State of New York and has a charter.
 - 4. **Charitable organization** also includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the State for a charitable organization that has its principal place of business outside the Town or State of New York.
- J. **Competent individual:** A person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.
- K. **Completed application:** A fully completed application form, a BCI report, two copies of the original identification relied on by the applicant to establish proof of identity, and the tendering of fees.

- L. **Criminally convicted:** The final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the applicant or registered solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.

Disqualifying status: Anything specifically defined in this Chapter as requiring the denial or suspension of a certificate, and any of the following:

1. The applicant or registered solicitor has been criminally convicted of:
 - a. Felony homicide;
 - b. Physically abusing, sexually abusing, or exploiting a minor;
 - c. The sale or distribution of controlled substances;
 - d. Sexual assault of any kind;
 - e. Conviction for criminal or unlawful possession or sale of a weapon or firearm.
2. Criminal charges currently pending against the applicant or registered solicitor for:
 - a. Felony homicide;
 - b. Physically abusing, sexually abusing, or exploiting a minor;
 - c. The sale or distribution of controlled substances;
 - d. Sexual assault of any kind;
 - e. criminal or unlawful possession or sale of a weapon or firearm.
3. The applicant or registered solicitor has been criminally convicted of a felony within the last ten (10) years;
4. The applicant or registered solicitor has been incarcerated in a federal or state prison within the past five (5) years;
5. The applicant or registered solicitor has been criminally convicted of a misdemeanor within the past five (5) years involving a crime of:
 - a. Moral turpitude; or
 - b. Violent or aggravated conduct involving persons or property.
6. A final civil judgment has been entered against the applicant or registered solicitor within the last five (5) years indicating that:

- a. The applicant or registered solicitor had either engaged in fraud or intentional misrepresentation; or
 - b. That a debt of the applicant or registered solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. Sections 523(a) (2), (a) (4), (a) (6) or (a) (19);
- 7. The applicant or registered solicitor is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
 - 8. The applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction; or
 - 9. The applicant or registered solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.
- M. **Door-to-door solicitation:** The practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and or services.
- N. **Entity:** Includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.
- O. **Fees:** The cost charged to the applicant or registered solicitor for the issuance of a certificate and/or identification badge, which shall not exceed the reasonable costs of processing the application and issuing the certificate and/or identification badge.
- P. **Final civil judgment:** A civil judgment that would be recognized under law as a judgment to which collateral estoppel would apply.
- Q. **Food Vending Business:** The sale of prepared food products for immediate consumption from a motor vehicle, trailer, platform, stand or tenet on any highway or other place within the town other than within a fully enclosed building or a stand or outside sales and eating place maintained as an adjunct to a food vending business maintained in any adjoining fully enclosed building.
- R. **Goods:** One or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.
- S. **Home solicitation sale:** To make or attempt to make a sale of goods or services by a solicitor at a residence by means of door-to-door solicitation, regardless of:
- 1. The means of payment or consideration used for the purchase;
 - 2. The time of delivery of the goods or services; or

3. The previous or present classification of the Solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.
- T. **Licensing officer:** The Town Clerk or other designee of the Town Board responsible for receiving from an applicant or registered solicitor the completed application and either granting, suspending, or denying the applicant's certificate.
- U. **No solicitation sign:** A reasonably visible and legible sign that states "No Soliciting" or "No Solicitors" or "No Salespersons" or "No Trespassing," or "No Knock Registry Member," or words of similar import.
- V. **Person:** One or more persons, corporations, partnership, associations, organizations and all other entities.
- W. **Political position:** Any actually held belief or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.
- X. **Registered solicitor:** Any person who has been issued a current certificate by the Town.
- Y. **Registration:** The process used by the Town licensing officer to accept a completed application and determine whether or not a certificate will be denied, granted, or suspended.
- Z. **Religious belief:** Any sincerely held belief or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.
- AA. **Residence:** Any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the Town, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, Public Street or public rights-of-way.
- BB. **Responsible person or entity:** That person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale
1. Maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;
 2. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and

3. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.
- CC. **Roadside Farm Market:** A trucker gardener or farmer who himself or by his agents sells or barter products of his own farm or garden from any location within the town, other than his residence or farm.
- DD. **Sale of goods or services:** The conduct and agreement of a solicitor and the competent individual in a residence regarding a particular good(s) or service(s) that entitles the consumer to rescind the same within three (3) days under any applicable federal, state, or local law.
- EE. **Services:** Those intangible goods or personal benefits offered, provided, or sold to a competent individual of a residence.
- FF. **Soliciting or solicit or solicitation:** Shall mean any of the following activities:
1. Seeking to obtain sales or orders for the exchange of goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
 2. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;
 3. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity;
 4. Seeking to obtain orders or prospective customers for goods or services;
 5. Seeking to engage an individual in conversation at a residence for the purpose of promoting or facilitating the receipt of information regarding home solicitation sale or purchase; and
 6. Other activities falling within the commonly accepted definition of soliciting, such as canvassing, hawking, or peddling.
- GG. **Solicitor or solicitors:** A person(s) engaged in door-to-door solicitation or otherwise engaged in activities constituting solicitation.
- HH. **Submitted in writing:** The information for an appeal of a denial or suspension of a certificate submitted in any type of written statement to the Town offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

II. **Substantiated report:** An oral, written, or electronic report that is submitted to and documented by the Town by any of the following:

- a. A competent individual who is willing to provide law enforcement or other Town employees with publicly available identification of their name, address, and any other reliable means of contact;
- b. a law enforcement officer with jurisdiction in the Town or a licensing officer; or
- c. Any other regularly established law enforcement agency at any level of government; and

That provides any of the following information regarding a registered solicitor:

- a. Documented verification of a previously undisclosed disqualifying status of a registered solicitor;
- b. Probable cause that the registered solicitor has a disqualifying status that has not yet been confirmed to be a disqualifying status;
- c. Documented, eyewitness accounts that the registered solicitor has engaged in repeated patterns of behavior that demonstrates failure by the registered solicitor to adhere to the requirements of this chapter; or
- d. Reasonable cause that continued licensing of the registered solicitor creates exigent circumstances that threaten the peace, health, safety, or general welfare of any individuals or entities within the Town.

JJ. **Town:** The Town of Monroe.

KK. **Town Board:** The Town Board of the Town of Monroe.

LL. **Town Clerk:** The Town Clerk of the Town of Monroe.

MM. **Transient Retail Business:** A business conducted in any motor vehicle, trailer or tent or on any street or other open place for the sale of retail goods, wares or merchandise, excepting prepared food and farm products.

NN. **Waiver:** The written form provided to the applicant by the Town wherein the applicant agrees that the Town may obtain a name/date of birth BCI background check on the applicant for licensing purposes under this Chapter, and which contains applicant's notarized signature.

§ 35-4 Exemptions from Chapter.

The following are exempt from registration under this chapter:

- A. Persons specifically invited to a residence by a competent individual prior to the time of the person's arrival at the residence;
- B. Persons soliciting in good faith for the benefit of any bona fide fraternal, educational, religious, or charitable organization such as Girl or Boy Scout programs, Little League, Rotary Club, Lions Club or like-minded local civic groups soliciting for the benefit of organizations that shall have otherwise been certified or otherwise been duly qualified as required by law or by any competent governmental body or agency unless there is a pending legal action or proceeding brought on behalf of the New York State Department of Consumer Affairs or the Orange County Consumer Affairs Office against the organization;
- C. Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual;
- D. Persons advocating or disseminating information for, against, or in conjunction with, any religious belief or political position regardless of whether goods, services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase;
- E. Students soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs; provided, that the solicitation has been approved in writing by the school administration and filed with the Town, and that such student solicitors carry current picture student identification from the educational institution for which they are soliciting;
- F. An honorably discharged veteran who:
 - (a) Is physically disabled as a result of injuries received while in the service as set forth in § 35 of the General Business Law of the State of New York; and
 - (b) Holds a license granted pursuant to § 32 of the General Business Law.
- G. A wholesaler selling articles to dealers or merchants who have an established place of business within the town or their employees while acting within the scope of their employer and not having another use;
- H. Persons engaged in the sale of cosmetics or household goods within a residence, provided that such sales occur solely and exclusively within a residence by permission of the owner thereof;
- I. A child (under eighteen years old) regularly attending any public or private school within the County of Orange.
- J. Sales conducted pursuant to statute or Court order.

All persons and organizations that are exempted from the license requirements under this Chapter shall maintain and keep records identifying all persons soliciting funds within the Town, and such records shall contain at least the name and the address of the person soliciting, the areas solicited and the date or dates of solicitation. Said records shall be made available for inspection by a law enforcement authority or other enforcement official investigating any solicitor or peddler.

§ 35-6 Solicitation Prohibited.

Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private residence or property upon which a private residence is located within the Town by solicitors, for the purpose of home solicitation sales or to provide goods or services is prohibited and is punishable as set forth in this Chapter. It shall be unlawful for any person to conduct or operate a transient retail business, roadside farm market or food vending business.

Further, it shall be unlawful for any person to solicit within the Town without first having registered with the Town Clerk and having received, and having in force and effect, a certificate for the same, if such is required by the Town Clerk.

Additionally, no person shall engage in the following acts within the Town:

- A. Promote, influence, or attempt to promote or influence a property owner, occupant, or tenant to list for sale, sell, or remove from a lease real property by referring to race, color, sexual orientation, ethnicity, or religious affiliation of neighbors, prospective buyers or other occupants or prospective occupants of real property.
- B. Induce directly or indirectly, or attempt to induce directly or indirectly, the sale or listing for sale of real property by representing that the presence or anticipated presence of persons of any particular race, religion, or national origin in the area has resulted in or may result in:
 - (1) The lowering of property values;
 - (2) A change in the racial, religious, or ethnic composition of the block, neighborhood, or area in which the property is located;
 - (3) An increase in criminal or antisocial behavior in the area; or
 - (4) A decline in the quality of the schools serving the area.
- C. Make any representation or misrepresentation concerning the listing or sale of the anticipated listing for sale or the sale of any real property in any residentially zoned areas for the purpose of inducing or attempting to induce the sale or listing for sale of other real property in such area.
- D. Make any representation to any prospective purchaser that any block, neighborhood or area has, will or might undergo an adverse change with respect to the religious, racial, or ethnic composition of the block, neighborhood or area for the purpose of discouraging the purchase of property in a particular area.
- E. Place, canvass, or distribute any letter, sign, note, pamphlet, advertisement, flyer, leaflet, placard, or other written material, to or upon a private residence purporting an offer for sale or purchase for any property that is not in fact offered for sale by the owner of said property.
- F. Advertise for sale or rental property which is non-existent or which is not actually for sale or rental.
- G. Engage in or hire or conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, create or play upon unjustified fear with the purpose of inducing or attempting to induce the sale or listing for sale of real property.

- H. Solicit or canvass any person whose name and property address is included on the list maintained by the Town Clerk of persons requesting that they not be canvassed or solicited, or solicit or canvass any occupant of a residence displaying a "No Solicitation" Notice" or a "No Knock Registry Member Sign."
- I. To engage in any economic reprisal or any other form of intimidation against any person because that person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or conference under the terms of this article.
- J. To aid, abet, incite, compel or coerce any person to engage in any of the practices forbidden by this article or to obstruct or prevent any person from complying with the provisions of this article.
- K. Refer, directly or indirectly or by implication, to race, color, creed, ethnicity, or sexual orientation in any advertisement or other solicitation offering real property for sale or rental.
- L. Solicit or attempt to solicit the sale or rental or the listing for sale or rental of real property without furnishing in written form to the owner or occupier of such real property the name of the person or organization soliciting such sale, rental or listing.
- M. Solicit on Sidewalks.
- N. Maintain any booth or stand or place any barrels, boxes, crates or other obstruction upon any street, sidewalk or public place for the purpose of conducting business without the express advanced approval of the Code Enforcement Officer or the Town Board.
- O. Willfully misstating any fact about any article offered for sale.
- P. Willfully offering for sale any article of an unwholesome or defective nature.
- Q. Call attention to his goods by blowing a horn, by ringing a bell, other than a house doorbell, by shouting or crying or by any loud or unusual noise, except that peddlers of ice cream and ice cream products for immediate consumption are exempted from the foregoing prohibition of the use of a bell.
- R. Frequent any street, sidewalk or public place so as to cause a private or public nuisance.
- S. Fail to keep any vehicle or receptacle used by him in his licensed business in a sound, clean and/or sanitary condition.
- T. Fail to keep any edible articles offered for sale well-protected from dirt, dust and insects.
- U. Fail to deliver to every person to whom a sale is made or from whom an order is taken a legibly written receipt, signed and dated by the purchaser, setting out the total price, a description of the goods or services sold or ordered and a statement of any payment received by the purchaser.
- V. Fail to leave premises promptly upon request of any occupant of such premises.
- W. Conduct business in a town right-of-way or on town property.
- X. Conduct activities in such a manner as to interfere with the pedestrian or vehicular use of the public streets and places.