

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

ORDINANCE #12-2020

**ORDINANCE OF THE BOROUGH OF MENDHAM, IN THE COUNTY OF MORRIS AND STATE OF NEW JERSEY,
AMENDING CERTAIN PROVISIONS OF CHAPTER 151, PEDDLING AND SOLICITING, OF THE BOROUGH CODE**

WHEREAS, the Borough of Mendham Administration and Police Department have recommended amendments to Chapter 151, Peddling and Soliciting, of the Borough Code to clarify certain requirements and to transfer administrative responsibility for licenses to the Police Department; and

WHEREAS, the Borough Attorney has reviewed the recommended amendments and finds them acceptable; and

WHEREAS, the Mayor and Borough Council wish to adopt the recommended amendments to the Code.

THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Mendham, in the County of Morris and State of New Jersey, as follows:

SECTION 1. Chapter 151, Peddling and Soliciting, is hereby amended with the following changes to read as follows in its entirety:

Article 1. General Provisions

§ 151-1. Definitions.

For the purpose of this Article and as used herein, the following words shall have the following meanings:

APPLICANT

Any person who applies for a license in accordance with the terms and provisions of this Article.

BOROUGH

The Borough of Mendham.

BOROUGH COUNCIL

The Borough Council of the Borough of Mendham.

CHIEF

The Chief of Police of the Borough of Mendham, or designee.

LICENSEE

Any person who has applied for, has been issued and holds a license in accordance with the terms and provisions of this Article.

MERCHANDISE

Food, fruit, vegetables, farm products, magazines, periodicals, all kinds of articles of personal property for domestic use and orders or contracts for home improvements or alterations.

PEDDLER

Any person who goes from house to house or from place to place by traveling on the streets and roads, carrying, conveying or transporting goods, wares or merchandise for the purpose of engaging in the business of selling and delivering them to customers; provided, however, that the word "peddler" shall not include wholesalers calling on retail merchants.

POLICE DEPARTMENT

The Borough of Mendham Police Department.

PERSON

Any natural person.

SOLICITOR

Any person who goes from house to house or from place to place by traveling on the streets or roads for the purpose of engaging in the business of taking or attempting to take orders for the sale of goods, wares and/or merchandise or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such person has, carries or exposes for sale a sample of the object to be sold and whether or not he is collecting advance payments on such sales; provided, however, that the word "solicitor" shall not include wholesalers calling on retail merchants.

§ 151-2. Permit and license required.

It shall be unlawful for any person to act as or to engage in the business of a peddler or solicitor within the Borough without having first obtained a license therefor as provided for herein and except in compliance with all other terms and provisions of this Article.

§ 151-3. Exceptions.

The licensing requirements of this Article shall not apply to the following:

- A. Any person honorably discharged from the military services of the United States possessing a peddler's license issued in conformity with N.J.S.A. 45:24-9 et seq., provided that a copy of such license is filed with the Chief for identification purposes.
- B. Any person who is an exempt fire fighter of a volunteer Fire Department, as defined by N.J.S.A. 45:24-9 et seq., possessing a license in conformity with said law.
- C. Any person engaged in the delivery of goods, wares or merchandise or other articles or things, in the regular course of business, to the premises of persons who had previously ordered the same or were entitled to receive the same by reasons of a prior agreement.
- D. Any person engaged in charitable and philanthropic solicitation, as defined in Article II of this Chapter, which persons shall be governed by the licensing requirements of Article II of this Chapter.

§ 151-4. Application.

Every applicant for a license under this Article shall obtain from the Police Department or Borough website and file with the Chief a sworn written application, which shall give the following information:

- A. Name and description of the applicant.
- B. Permanent home address and local address of the applicant, to include full street address (no P.O. boxes permitted).
- C. A brief statement of the nature of the business and a description of the goods, wares, merchandise or service 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 license is desired.
- F. If a vehicle is to be used, a description of such vehicle and its license number.
- G. The place where the goods or property to be sold or offered for sale are manufactured or produced, where such goods or property are located at the time such application is filed and the proposed method of delivery.
- H. A photograph of the applicant taken within sixty (60) days immediately prior to the date of the application, which photograph shall clearly show the head and shoulders of the applicant and shall measure two inches by two inches.
- I. Two business references located in the County of Morris, State of New Jersey, or, in lieu thereof, such other available evidence of the character and business responsibility of the applicant that will enable an investigator to properly evaluate such character and responsibility.
- J. A completed and executed Borough of Mendham Background Investigation Release and Waiver of Liability Form.

§ 151-5. Fees.

- A. Registration fee and criminal history record background check fee. At the time the application is filed, fees as set forth in Chapter 102, Fees, shall be paid to the Chief to cover the cost of processing the application and of conducting a criminal history record background check.
- B. Badge fee. If and when a license is issued, a nonrefundable badge fee as set forth in Chapter 102, Fees, shall be paid to the Chief for the badge required hereunder.

§ 151-6. Investigation and issuance of license.

All applicants are required to undergo a criminal history record background check conducted by the Chief. Applicants who can provide proof of a valid New Jersey criminal history record background

check conducted within the previous twelve (12) months may submit same to the Chief, who will conduct an updated background check.

Applicants who have had a criminal history record background check within the past twelve (12) months outside of New Jersey may provide a certified letter listing their full name, birthdate and the name of the vendor through which the background check was obtained. Employers submitting a certified letter must list the full name and birthdate of each and every employee who will be soliciting within the Borough. When a certified letter is provided for one or more individuals, the Chief reserves the right to conduct a criminal history record background check on any and all individuals named in the letter.

Upon receipt of an application properly completed and submitted pursuant to § 151-4 above, the Chief shall make such investigation of the business responsibility and moral character of the applicant (and, if employed, the applicant's employer) as deemed necessary for protection of the public good. Such investigation shall be kept on file in the Police Department upon completion of the investigation. The investigation shall include a criminal history record background check made pursuant to N.J.S.A. 53:1-20.5 et seq. The criminal history record background check shall be kept confidential. For the purposes of this check, the Police Department is hereby authorized to have access to the criminal history record information file through the State Bureau of Investigation.

- A. If, as a result of such investigation, the moral character or business responsibility of the applicant (or, if employed, the applicant's employer) is found to be unsatisfactory, the Chief shall endorse on the original application a disapproval and reasons therefor and notify the applicant, in writing, either by personal delivery to the applicant or by certified mail to the applicant at the address stated in the application, that the application is disapproved, as well as the reasons therefor, and that no license shall be issued. The applicant shall have the right to appeal from any such disapproval pursuant to the provisions contained in § 151-12 hereof. Any determination by the Chief that an application is unsatisfactory shall be based on one or more of the following findings with respect to the applicant:
 - (1) Conviction of a crime adverse to solicitation activities pursuant to N.J.S.A. 2A:168A-1. In determining whether a conviction relates adversely to solicitation activities, the following factors shall be considered:
 - (a) Nature of solicitation activities.
 - (b) Nature and seriousness of the crime.
 - (c) Circumstances under which the crime occurred.
 - (d) Date of the crime.
 - (e) Age of the person when the crime was committed.
 - (f) Whether the crime was an isolated or repeated incident.
 - (g) Social conditions which may have contributed to the crime.
 - (h) Any evidence or rehabilitation.
 - (2) Record of breaches or solicited contracts.
 - (3) Unethical business practices adverse to solicitation activities.
 - (4) Conclusive evidence that the applicant has within four months of the application been addicted to the habitual use of drugs or intoxicating liquors pursuant to N.J.S.A. 2A:168A-4.
- B. If, as a result of such investigation, the character and business responsibility of the applicant (and, if employed, the applicant's employer) are found to be satisfactory, the Chief shall endorse an approval on the original application and issue a license to the applicant. Such license shall contain the signature of the Chief as issuing officer and shall show the name, address and photograph of the licensee, the nature of license issued, the kind of goods or services to be sold thereunder, the name of the licensee's employer (if any), the date of issue, the length of time the license shall be operative and the motor vehicle license number and other identifying description of any motor vehicle to be used in the peddling or soliciting activity licensed.
- C. The Chief shall issue a badge to each licensee at the time of delivery of the license, which badge shall show the nature of the license in letters and figures easily discernible from a reasonable distance. Such badge shall, during the time such licensee is engaged in peddling or soliciting, be worn constantly by the licensee on the front of an outer garment in such a way as to be visible to a facing person.
- D. No license shall be issued wherein any person who would use the proposed license is under sixteen (16) years of age.

§ 151-7. Duties of licensee.

Any person holding a peddler's license or solicitor's license issued under the authority of this Article, or by the Clerk of the County of Morris under the authority of N.J.S.A. 45:24-9 and 45:24-10, shall be required to carry such license while engaged in the business or activity licensed within the corporate limits of the Borough. The licensee shall produce such license at the request of any official of the Borough or at the request of any person with whom the licensee wishes to conduct business. Every such licensee shall restrict peddling or soliciting activities within the Borough to the hours between 9:00 a.m. and thirty (30) minutes past sunset prevailing time, and shall notify the police officer on duty at least once in every week in which licensee plans to conduct said activities. Such notification shall include a statement of the general area of the Borough in which the licensee intends to conduct said activities and a schedule of dates and times when said activities shall be conducted. The licensee shall notify the police officer on duty of any change in area or in dates or times should such changes be made during the week.

§ 151-8. Prohibited practices.

No licensee, either under this Article or under N.J.S.A. 45:24-9, shall:

- A. Call attention to licensee's business or merchandise by crying out, blowing a horn or by any other loud or unusual noises.
- B. Conduct or attempt to conduct business at any residence or on any property on which is posted a sign expressly prohibiting such activity.
- C. During school hours, conduct or attempt to conduct business within (two hundred (200) feet of any place occupied exclusively as a public or private school or for school purposes, nor during said times shall licensee permit a cart, wagon or vehicle to stand on any public highway within said distance of such school property.
- D. Allow any other person to use the license issued hereunder.
- E. Engage in any conduct which would be a cause for revocation of the license as set forth in § 151-11A.

§ 151-9. Enforcement.

It shall be the duty of the Chief and any police officer of the Borough to enforce the provisions of this Article.

§ 151-10. Records.

The Chief shall maintain a record of all licenses issued under the provisions of this Article and shall record therein all convictions for violations of this Article and other pertinent circumstances and incidents reported by the Chief, other Borough officials or other persons.

§ 151-11. Revocation of license.

- A. Licenses issued under the provisions of this Article may be revoked by the Borough Council, after notice and hearing, for any of the following causes:
 - (1) Any misrepresentation or false statement contained in the application for a license.
 - (2) Fraud, misrepresentation or false statement by the licensee in the course of conducting the business licensed.
 - (3) Any violation of § 151-8 or any other provisions of this Article.
 - (4) Conviction of any crime adverse to soliciting, peddling, canvassing or hawking pursuant to N.J.S.A. 2A:168A-1.
 - (5) Conducting the business licensed in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare of the public, the foregoing including, without limitation, use of threatening conduct or abusive language in dealing with residents and others as well as failure to leave promptly the premises of a resident or property owner when requested to do so.
- B. Written notice of the hearing for revocation of a license shall be given to the licensee by the Chief, which hearing shall be held within thirty (30) days of the date of the notice. Such notice shall set forth the specific grounds of complaint and the time and place of hearing and shall either be delivered personally to the licensee or be sent by certified

mail to the licensee at licensee's last known address at least five (5) days prior to the date set for hearing.

- C. In the event that the Chief shall determine that there has been a violation in accordance with Subsection A(2) above, then and in that case the Chief shall immediately notify the Borough Council of said violation and shall order the licensee to suspend further operation until a hearing is held in accordance with the provisions of this section.

§ 151-12. Appeal.

Any applicant aggrieved by the action of the Chief in the denial of a license, as provided in § 151-6 of this Article, shall have the right of appeal to the Borough Council. Such appeal shall be taken by filing with the Borough Council, within fourteen (14) days after the notice of the action complained of has been given to such person by the Chief in accordance with § 151-6, a written statement setting forth fully the grounds for the appeal. The Borough Council shall set a time and place for hearing on such appeal (which hearing shall be within thirty (30) days of the date of receipt of the applicant's statement), and notice of such hearing shall be given to the applicant in the same manner as provided in § 151-11 of this Article for notice of hearing on revocation. The decision of the Borough Council on such appeal shall be final and conclusive.

§ 151-13. Expiration and renewal of license.

Each license issued under the provisions of this Article shall expire at the expiration of a period of ninety (90) consecutive days from and after the date upon which it was issued. Any such license may be renewed, without payment of an additional registration fee, upon submission by the licensee of a new application in conformity with the requirements of § 151-4 of this Article or, in lieu thereof, a sworn written statement setting forth any changes in the information contained in the application for the expired license which are necessary to bring said application completely up to date or setting forth that there are no such changes. Such new application or statement in lieu thereof shall be subject to the provisions and standards set forth in § 151-4 of this Article.

§ 151-14. Violations and penalties.

Any person violating any of the provisions of this Article shall be subject, upon conviction, to the penalties provided in § 1-15 of this Code.

Article II. Charitable Solicitations

§ 151-15. Definitions.

For the purpose of this Article and as used herein, the following words shall have the following meanings:

CHARITABLE AND PHILANTHROPIC

Patriotic, religious, eleemosynary, benevolent, educational, civic or fraternal associations, societies and the like.

CONTRIBUTION

The giving of alms, food, clothes, money subscriptions, pledges or property of any nature or kind.

PERSON OR ORGANIZATION

Any individual, firm, partnership, corporation, company, association, church, religious denomination, society, class or league.

SOLICIT AND SOLICITATION

The request, directly or indirectly, of money, credit, property, financial assistance or other things of value, on the plea or representation that such money, credit, property, financial assistance or other thing of value will be used for a charitable and philanthropic purpose, as defined in this Article. Solicitation shall be deemed to be complete when made, whether or not the person making the same receives any contribution.

§ 151-16. Permit required; exemption.

No person or organization shall solicit charitable and philanthropic contributions within the Borough without first obtaining a permit authorizing such solicitations, provided that the requirements of this section or of §§ 151-17 through 151-19 shall not apply to any person or organization possessing a current, valid registration with the State of New Jersey pursuant to N.J.S.A. 45:17A-1 et seq., a copy of which shall be filed with the Chief prior to conduct of any solicitation.

§ 151-17. Application for permit; investigation.

- A. Application for a permit to make a public solicitation of funds by charitable and philanthropic organizations shall be made to the Chief upon forms available from the Police Department and on the Borough's website.
- B. An investigation of the application shall be made by the Chief to determine that the person or organization is bona fide.

§ 151-18. Issuance of permit.

Upon authorization of the Borough Council, the Chief shall issue a permit for the conduct of activities under this section. There shall be no fee for a permit issued hereunder.

§ 151-19. Time limit.

No permit may grant the right to solicit for a period longer than ninety (90) consecutive days.

§ 151-20. Written receipts.

Any person or organization receiving money from any contributor under a solicitation made pursuant to this Article shall give to the contributor a written receipt signed by the solicitor showing the date and the amount received, if requested by the contributor.

§ 151-21. Hours of solicitation.

All solicitations conducted under the authority of this section shall take place between the hours of 9:00 a.m. and thirty (30) minutes past sunset, prevailing time.

§ 151-22. Identification required.

Any person conducting charitable solicitation within the Borough shall carry and, upon request, produce for examination either a permit issued pursuant to § 151-16 or written identification showing that person to be a member of the organization to whom a permit or exempt registration has been issued.

§ 151-23. Violations and penalties.

Any person violating any provision of this Article shall be subject, upon conviction, to the penalties provided in § 1-15 of this Code.

Article III. Nonsolicitation List

§ 151-24. Collection, preparation and maintenance of a nonsolicitation list.

- A. The Police Department shall collect, prepare and maintain a list of addresses of those residential premises where the owner and/or occupant has notified the Police Department that soliciting and canvassing is not permitted. To be included on the nonsolicitation list, residents shall complete a registration form available from the Police Department or on the Borough website.
- B. The nonsolicitation list shall be distributed to all applicants seeking a license to solicit or canvass pursuant to the provisions of this Chapter. The licensee shall not solicit or canvass at any address on the nonsolicitation list.
- C. If a resident moves out of the Borough or for some other reason wishes to have the address removed from the nonsolicitation list, the resident must notify the Police Department in writing. Upon receipt of such a request, the Police Department will remove the name from the list.
- D. The nonsolicitation list applies to all solicitations in the Borough, excluding charitable solicitations addressed in Article II of this Chapter.
- E. This Article may be enforced by the Police Department and/or the Borough Zoning Officer. Any solicitor or canvasser violating the provisions of § 151-24 described above shall be punishable by a fine and/or imprisonment as prescribed in §§ 151-14 and 151-23 under this Chapter. The permit may be suspended for a period of thirty (30) days for the first violation and up to one year after the second violation."

SECTION 2. All ordinances of the Borough of Mendham, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

SECTION 5. This Ordinance may be renumbered for the purposes of codification.

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Introduced: October 14, 2020

Public Hearing: October 26, 2020