

ORDINANCE 10-18

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF MOUNT ARLINGTON CHAPTER 132 PEDDLING AND SOLICITING, ARTICLE I PEDDLERS, HAWKERS AND VENDORS ARTICLE II SOLICITORS AND CANVASSERS; AND ARTICLE III CHARITABLE SOLICITATIONS

WHEREAS, on May 25, 2018, the Borough Attorney received Municipal Excess Liability Legal Bulletin No.: 18-29 from the Municipal Excess Liability Joint Insurance Fund, a copy of which is incorporated herein as if set forth at length, advising that recently the United States District Court for the District of Colorado in Apive Environmental, LLC v. Town of Castle Rock, Colorado, invalidated the Town's 7:00 p.m. solicitation curfew, holding that the curfew was an unconstitutional restriction on purely commercial speech; and reminding that in New Jersey Citizen Action v. Edison Twp., 797 F.2d 1250 (3d Cir. 1986), the Federal courts ruled that solicitation ordinances requiring fingerprinting or with curfews before 9:00 p.m. violated constitutional rights. The memorandum also advised that courts in other jurisdictions have also over turned solicitation ordinances because they were unduly burdensome or vested the licensing authority with unrestricted discretion; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Code and desires to amend and supplement the current code section Chapter 132 Peddling and Soliciting, with amended versions of Article I Peddlers, Hawkers and Vendors; Article II Solicitors and Canvassers; and Article III Charitable Solicitations; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington recognizes the importance of free speech protected by the First Amendment; and its substantial interest in protecting the privacy of its residents who do not want to be visited by uninvited solicitors and preventing crime; and

WHEREAS, the revised articles aim to eliminate previous inconsistency; protect the residents who are concerned about unscrupulous solicitors knocking on their doors; and set forth requirements of applicants so that the Borough may make a fair determination to grant and deny solicitation applications if necessary. The Borough requests its residents to sign up online to be placed on the No-Solicitation list or place a sign on their residence if they wish to avoid solicitation.

BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris and State of New Jersey that the current code section current code section Chapter 132 Peddling and Soliciting, Article I Peddlers, Hawkers and Vendors; Article II Solicitors and Canvassers; and Article III Charitable Solicitations be amended and supplemented in its entirety.

SECTION 1. Chapter 132 Peddling and Soliciting, Article I Peddlers, Hawkers and Vendors; Article II Solicitors and Canvassers; and Article III Charitable Solicitations be amended and supplemented in its entirety as follows:

ARTICLE I Peddlers, Hawkers and Vendors
[Adopted as Section 4-1 of the 1982 Compilation]

§ 132-1. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

PEDDLER - Any person, whether a resident of the Borough or not, traveling by foot, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, food, ice cream, fruit ices, soda water, garden farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers. "Auctioneer", "hawker", "huckster", "junkie", "pawnbroker", "peddler" and "vendor" shall also be included in this definition.

§ 132-2. License required; investigation.

No person shall engage in the business of a peddler within the Borough without first obtaining a license. An investigation of the application shall be made by the Chief of Police to determine that the person or organization is bona fide. Upon making such a determination the Chief of Police shall notify the Borough Clerk.

§ 132-3. Authority to grant licenses.

The Borough Clerk upon authorization by the Borough Council shall grant licenses to such persons as may be proper according to the provisions of this Article to carry on the trade or business or act in the capacity of a Peddler.

§ 132-4. No Solicitation List.

The Borough Clerk shall maintain a list of all property owners who have notified the Borough that they do not wish for any Peddler to enter upon their property for Peddling purposes whether for commercial or non-commercial purposes. This No Solicitation List will be provided by the Borough to all licensees and non-commercial purposes whether or not a license is required. It is requested that no Peddler shall enter upon any private property that is included upon the No Solicitation List or any households that have posted a sign prohibiting solicitation. Violators of this section may be subject to fine and/or suspension or revocation of the license granted under this Article.

§ 132-5. Expiration; contents of license.

- A. A license under this article shall expire on the first day of January next after the same shall have been granted. It shall state the purpose for which it has been granted and the name of the person licensed.
- B. A license granted to an auctioneer shall designate the store or place in which the persons receiving such license shall be authorized to carry on such business, but on special occasions such licensed person may act as an auctioneer at any other place where the services may be required.

§ 132-6. Fees.

There shall be charged to each person licensed and paid to the Treasurer of the Borough as part of the revenue of the Borough the following licensing fees:

- A. For each auctioneer: \$25.
- B. For each hawker, huckster and peddler with the privilege of using one vehicle: \$50.
- C. For each pawnbroker: \$50.
- D. For each junker with the privilege of using one vehicle: \$10; and for each additional vehicle: \$5.

§ 132-7. Use of streets.

No Peddler shall have any exclusive right to any location, nor shall be permitted to operate in any congested area where the operations might impede public safety. For the purpose of this Article, the judgment of a Borough police officer, exercised in reasonable and good faith, shall be deemed conclusive as to whether the area is congested, or the public's safety impeded.

§ 132-8. Time restrictions.

No person shall sell, offer for sale, hawk or peddle in the Borough any of the items listed in §132-1 before 9:00 a.m. or after 9:00 p.m., nor on Sundays or holidays. Any request to do so for hours or days other than those stated herein shall be stated on the application to be reasonably approved by the Borough Council. Any approval shall be plainly stated on the license issued by the Borough Clerk.

§ 132-9. Duty of police to enforce.

It shall be the duty of any police officer of the Borough to require any person seen peddling to produce a Peddler's license and to enforce the provisions of this Article against any person found to be violating the same.

§ 132-10. Exceptions.

A. This section shall not be construed to include:

- (1) The delivery of milk, eggs, bread, newspapers or such other necessary and perishable article of food or merchandise of the type commonly delivered on a house-to-house basis at intervals of less than one (1) week.
- (2) Federal census takers and polls or surveys taken pursuant to federal, state or local laws.

B. Any veteran or volunteer fireman who holds a special license issued pursuant to N.J.S.A. 45:24-9 shall be exempt from application for a license but shall be required to comply with all other applicable sections of this Article.

§ 132-11. Inspection of equipment.

The equipment used or employed by peddlers of ice cream, foods, beverages, confections and other related commodities shall be maintained in a clean and sanitary manner and be subject to the inspection of the Board of

Health or its authorized agent. Any violation found and not immediately corrected shall be grounds for revocation of the license.

§ 132-12. Suspension or revocation of license.¹

Any license granted under the provisions of this Article may be suspended or revoked by the Mayor upon satisfactory cause shown, and during the suspension of such license the same shall be inoperative and void. Any suspension or revocation is subject to the approval of the Borough Council.

§ 132-13. Violations and penalties.² [Amended 7-8-02 by Ord. No. 02-23]

Any person violating any part of this Article shall, upon conviction thereof, be liable to the penalty provided by Chapter 1, Article III.

ARTICLE II Solicitors and Canvassers

**[Adopted as Section 4-2 of the 1982 Compilation; amended 7-8-2002 by Ord. No. 02-23;
4-10-2006 by Ord. No. 12-06; amended in its entirety 11-12-2013 by Ord. No. 10-13]**

§ 132-14. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

SOLICITOR - Any person, also known as a "canvasser," whether a resident of the Borough or not, traveling by foot, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, to take or attempt to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether or not the individual has, carries or exposes for sale a sample of the subject of the sale and whether or not payment is accepted in advance for the goods. Any person taking a poll or a survey from house to house or on the streets; or distributing advertisements, handbills, pamphlets, or literature is included.

§ 132-15. License required; investigation; expiration.

No solicitor or canvasser shall engage in such business within the Borough without first obtaining a license. An investigation of the application shall be made by the Chief of Police to determine that the person or organization is bona fide. Upon making such a determination the Chief of Police shall notify the Borough Clerk. A license under this article shall expire on the first day of January next after the same shall have been granted.

§ 132-16. Authority to grant licenses.

The Borough Clerk upon authorization by the Borough Council shall grant licenses to such persons as may be proper according to the provisions of this Article to carry on the trade or business or act in the capacity of a solicitor or canvasser.

§ 132-17. No Solicitation List.

The Borough Clerk shall maintain a list of all property owners who have notified the Borough that they do not wish for any solicitor or canvasser to enter upon their property for solicitation or canvassing purposes whether for commercial or non-commercial purposes. This No Solicitation List will be provided by the Borough to all licensees and non-commercial purposes whether or not a license is required. No solicitor or canvasser shall

enter upon any private property that is included upon the No Solicitation List, or any households that have posted a sign prohibiting solicitation. Violators of this section may be subject to fine and/or suspension or revocation of the license granted under this Article II.

§ 132-18. Exceptions.

This Article shall not apply to any person who has obtained a Charitable Solicitations permit in accordance with Article III of this chapter, nor shall it apply to any person distributing literature or handbills on behalf of a candidate for public office or a religious organization.

§ 132-19. Fees.

The fee for a solicitor's or canvasser's license shall be fifty dollars (\$50.).

§ 132-20. Badges; contents.

The Borough Clerk shall issue to each licensee at the time of delivery of the license a badge on which shall appear the words "Licensed Solicitor," the period for which the license is issued and the number of the license, in letters and figures easily discernible from a distance of ten (10) feet. During the time the licensee is engaged in soliciting, the licensee's badge shall be worn constantly and conspicuously on the front of the licensee's outer garment.

§ 132-21. Time restrictions.

No soliciting or canvassing activities shall be conducted before 9:00 a.m. or later than 9:00 p.m., nor on Sundays or holidays. Any request to do so for hours or days other than those stated herein shall be stated on the application to be reasonably approved by the Borough Council. Any approval shall be plainly stated on the license issued by the Borough Clerk.

§ 132-22. Duty of police to enforce.

It shall be the duty of any police officer of the Borough to require any person seen soliciting or canvassing to produce a license and to enforce the provisions of this Article against any person found to be violating the same.

§ 132-23. Suspension or revocation of license.

Any license granted under the provisions of this Article may be suspended or revoked by the Mayor upon satisfactory cause shown, and during the suspension of such license the same shall be inoperative and void. Any suspension or revocation is subject to the approval of the Borough Council.

§ 132-24. Violations and penalties.

Any person violating any part of this Article, shall upon conviction thereof, be liable to the penalty provided by Chapter 1, Article III.

ARTICLE III Charitable Solicitations
[Adopted as Section 4-3 of the 1982 Compilation]

§ 132-25. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

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, co-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 and 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.

§ 132-26. Permit required; investigation.

No person shall engage in the business of solicitation of charitable and philanthropic contributions within the Borough without first obtaining a permit. An investigation of the application shall be made by the Chief of Police to determine that the person or organization is bona fide. Upon making such a determination the Chief of Police shall notify the Borough Clerk.

§ 132-27. Authority to grant licenses.

The Borough Clerk upon authorization by the Borough Council shall grant a permit to such persons as may be proper according to the provisions of this Article to carry on solicitation of charitable and philanthropic contributions.

§ 132-28. No Solicitation List.

The Borough Clerk shall maintain a list of all property owners who have notified the Borough that they do not wish for any solicitation of charitable and philanthropic contributions be made by anyone upon their property whether for commercial or non-commercial purposes. This No Solicitation List will be provided by the Borough to all permit holders and non-commercial purposes whether or not a permit is required. It is requested that no solicitation of charitable and philanthropic contributions be requested upon any private property that is included upon the No Solicitation List. Violators of this section may be subject to fine and/or suspension or revocation of the permit granted under this Article.

§ 132-29. Fees.

There shall be no fee for a permit issued hereunder.

§ 132-30. Expiration; time restrictions.

No permit may grant the right to solicit for a period longer than ninety (90) consecutive days unless authorized by the Borough Council. No solicitation of charitable and philanthropic contributions shall be conducted before 9:00 a.m. or later than 9:00 p.m., nor on Sundays or holidays. Any request to do so for hours or days other than those stated herein shall be stated on the application to be reasonably approved by the Borough Council. Any approval shall be plainly stated on the license issued by the Borough Clerk.

§ 132-31. Duty of police to enforce.

It shall be the duty of any police officer of the Borough to require any person seen soliciting charitable or philanthropic contributions to produce a permit and to enforce the provisions of this Article against any person found to be violating the same.

§ 132-32. Written receipts required.

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, provided that this section shall not apply to any contribution collected by means of a closed box or receptacle used in solicitation where the use thereof has been approved by the Borough Council, where it is impractical to determine the amount of each contribution.

§ 132-33. Suspension or revocation of license. [Added 3-15-1995 by Ord. No. 95-1]

Any permit granted under the provisions of this Article may be suspended or revoked by the Mayor upon satisfactory cause shown, and during the suspension of such permit the same shall be inoperative and void. Any suspension or revocation is subject to the approval of the Borough Council.

§ 132-34. Violations and penalties. [Added 3-15-1995 by Ord. No. 95-1; Amended 7-8-02 by Ord. No. 02-23]

Any person violating any part of this article shall, upon conviction thereof, be liable to the penalty provided by Chapter 1, Article III.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

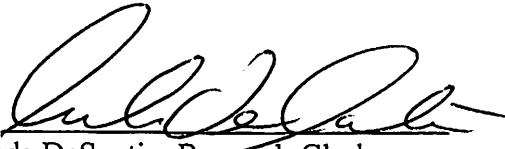
SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.


SECTION 4. This Ordinance shall take effect upon final publication as provided by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on July 10, 2018 and will be further considered after a Public Hearing held on August 7, 2018 at the Municipal Building at 7:00 P.M.

INTRODUCED:
PUBLISHED:
ATTEST:

BOROUGH OF MOUNT ALRINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY


Linda DeSantis, Borough Clerk


Michael Stanzilis, Mayor