

Introduced: 9/14/17
Public Hearing: 9/28/17
Effective: 11/8/17

TOWNSHIP OF MAHWAH

ORDINANCE NO. 1814

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER IV, "GENERAL LICENSING", OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF MAHWAH SECTION 4-3 "PEDDLING AND SOLICITING"

WHEREAS, the current Municipal Code is inadequate in preventing mass door-to-door solicitation of certain residential neighborhoods; and

WHEREAS, the Township of Mahwah desires to amend and supplement the provisions of Chapter IV "General Licensing" of the Township of Mahwah Revised General Ordinances, Section 4-3 "Peddling and Soliciting", to strengthen and update existing procedures and to implement a more aggressive prohibition of such door-to-door solicitations via a No-Knock Registry.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mahwah as follows:

Section I. Chapter IV - General Licensing

Section 4-3, General Licensing, Subsection 4-3, Peddling and Soliciting is hereby amended and supplemented in its entirety by replacement thereof as follows:

4-3 Peddling, soliciting and canvassing

4-3.1 PURPOSE.

The purpose of this article is to prevent fraud, crime, undue public annoyance and unethical and dishonest solicitation and canvassing practices within the Township of Mahwah. All application fees to be charged for the issuance of permits are not to be considered as revenue, but are charges for the purpose of covering the expenses of administering this article.

4-3.2 DEFINITIONS.

- a. Individual shall mean any natural person.
- b. Merchandise shall mean all goods, wares, food, drinks, fruits, vegetables, magazines, subscription, periodicals, printed material, farm products, and all type of articles of personal property, services and orders for contracts for services, home improvements or alterations, and anything that may be

sold or distributed shall be considered "merchandise" for the purposes of this article.

- c. Nonprofit Organization shall mean (1) any nonprofit charitable, religious, fraternal, social, civic or veteran organization, service club, or other organization qualified under 501(c)(3) of the Internal Revenue Code, or any volunteer fire or first aid company serving the Township of Mahwah; or (2) any nonprofit organization (whether or not qualified under 501(c)(3) of the Internal Revenue Code), located in the Township of Mahwah, the primary purpose of which is to benefit the school age children of the Township of Mahwah, including but not limited to, schools, school clubs and organizations, Cub Scouts, Boy Scouts, Brownies, Girl Scouts and similar youth groups.
- d. Peddler shall mean any person, whether a resident of the Township of Mahwah or not, who goes from house to house or place to place by any means of conveyance, carrying or transporting merchandise for the purpose of selling and delivering the merchandise to customers. The term peddler shall include the words hawker and huckster and shall also include a person who from time to time offers merchandise for sale from one or more fixed locations out of doors, when the merchandise is displayed or stored in a motor vehicle located on the property, whether the property is owned by that person or by others.
- e. Person shall mean and include any natural person, firm, partnership, corporation, organization, club or association or any principal or agent there.
- f. Solicitor shall mean an individual who goes from house to house or from place to place by any means of conveyance, soliciting or attempting to take orders for the sale of merchandise or services of any kind for future performance or delivery, whether or not such individual has, carries or exposes for sale a sample of the merchandise or services, and whether or not he is collecting advance payments on such sales or orders, or who engages in any of the foregoing activities from a stationary location or any street or any public place. The word solicitor shall also mean any individual who goes from house to house or from place to place for the purpose of obtaining contributions or subscriptions, or who does research analyses, makes surveys or opinion polls, obtains rating date or similar information, distributes advertisements or handbills of a commercial or partially commercial nature or who engages in any similar work which involves a door to door or place to place activity. The word solicitor shall also include the word canvasser.

- g. Transient Merchant shall mean any person who merchandises or sells with the intent to close out or discontinue a business within a period of one (1) year from the date of commencement and occupies a room, building or other permanently constructed premises for the purpose of selling merchandise. The words transient merchant shall also include the words itinerant vendor.

4-3.3 LICENSE REQUIRED.

It shall be unlawful for any peddler, solicitor or transient merchant to sell, offer for sale or distribute merchandise, printed material or services within the Township without first obtaining a license from the Chief of Police by filing an application for license, paying a license fee and obtaining said license.

4-3.4 EFFECT OF LICENSE.

Upon obtaining a license as hereinafter provided, a peddler, solicitor or transient merchant may conduct his activities within the Township only as long as he adheres to the regulations set forth in this chapter and carries the license upon his person or displays the license in a conspicuous place at all times during the conduct of this activities. The license shall identify the person and type of activity for which he is licensed and shall be shown to any Township Official, or Police Officer or any individual upon request.

4-3.5 APPLICATION FOR LICENSE.

An application for license shall be made upon forms provided by the Township, including a New Jersey State Bureau of Identification Form authorizing release of any criminal history record information. , The applicant shall also be required to go online to the New Jersey State Police website to request a fingerprint check. The cost of the fingerprint check shall be borne by the applicant. The applicant may submit, in lieu of a criminal history record form, a criminal history based upon fingerprints required in the past three (3) months preceding to this application which , shall be filed with the Mahwah Police Department and shall contain or be accompanied by the following information:

- A. For Solicitors and Peddlers:
 - 1. Name, age, physical description and Social Security or Federal I.D. Number of the applicant.
 - 2. Complete permanent home and local address of applicant together with telephone numbers.
 - 3. Name and address of the organization or persons for whom

canvassing or soliciting is being made together with telephone numbers.

4. Description of the nature of business or activity and the goods, services or wares to be sold.
5. Two (2) recent photographs of the applicant which shall be approximately two and one-half by two and one-half (2 ½ x 2 ½) inches in size and showing the head and shoulders of the applicant in a clear and distinguishing manner.
6. The days and dates upon which canvassing or soliciting is to take place.
7. A statement as to whether or not the applicant has been convicted of a crime of the fourth degree or higher, a disorderly persons offense, a petty disorderly persons offense, or a moving motor vehicle offense, and if so, the details thereof.
8. The make, model, year, color and license plate number of such vehicle used by the applicant during the period of canvassing or soliciting within the Township and the number of applicant's drivers license and the State in which it is issued.
9. The name and address of the insurance carrier and insurance policy number with respect to such vehicle or vehicles.
10. A list of municipalities where the applicant has ever engaged in the activities of canvassing, peddling or soliciting, whether or not a permit was applied for or received in connection therewith.
11. A statement as to whether or not the applicant has been denied a canvassing, peddling or soliciting permit and whether such permit or licensee has ever been revoked.
12. If the applicant is not an individual, the State in which it is registered or incorporated, and the name and address of the registered agent.
13. If the person applying is unable to provide any of the foregoing information, an explanation shall be provided of the reasons why such information is unavailable.
14. Applications of corporations, partnerships or other entities shall

have attached to their applications individual statements containing all of the information required by this subsection as to each employee or agent who shall engage in the licensed activity; said statements shall be signed and sworn to by each employee or agent and shall be treated, for investigation purposes, as separate applications to engage in a licensed activity. Applications by partnerships, corporations or other entities shall be signed by an authorized representative of the corporation, partnership or entity.

15. All applicants shall submit the original or a certified copy of a valid Certificate of Authority issued by the Director of the New Jersey Division of Taxation, pursuant to N.J.S.A. 54:32B-15, empowering the vendor to collect sales tax. Certificates shall not be required for the sale of property exempted from sales and use taxation pursuant to N.J.S.A. 54:32B-8.2. All vendors shall attach the original Certificate to their cart, stand, truck or other merchandising device, as required by N.J.S.A. 54:32B-15.
16. All applicants selling food items shall submit a copy of the Board of Health license.

B. For Transient Merchants:

1. Name, age, physical description and Social Security or Federal I.D. Number of the applicant.
2. Complete permanent home and local address of applicant together with telephone numbers.
3. Description of the nature of the business or activity including the average quantity, kind and value of the property to be sold.
4. Two (2) recent photographs of the applicant which shall be approximately two and one-half by two and one-half (2 ½ x 2 ½) inches in size and showing the head and shoulders of the applicant in a clear and distinguishing manner.
5. The dates during which the business is to be conducted.
6. The name and addresses of the persons from whom the goods making up the stock were or are to be purchased by the applicant.
7. A statement as to whether or not the applicant has been convicted of a crime of the fourth degree or higher, a disorderly persons offense, a petty disorderly persons offense, or a moving motor

- vehicle offense, and if so, the details thereof.
8. A list of municipalities where the applicant has ever engaged in transient merchandising, whether or not a permit was applied for or received in connection therewith.
 9. A statement as to whether the applicant has ever been denied or had revoked a transient merchant's license or permit.
 10. An instrument in accordance with N.J.S.A. 45:24-6 appointing the Chief of Police as the applicant's true and lawful agent.
 11. If the applicant is not an individual, the state in which it is registered or incorporated, and the name and address of the registered agent.
 12. If the person applying is unable to provide any of the foregoing information, an explanation shall be provided of the reasons why such information is unavailable.
 13. Applications of corporations, partnerships or other entities shall have attached thereto individual statements containing all of the information required by this subsection as to each employee or agent who shall engage in the licensed activity, and said statements shall be signed by each employee or agent. Applications by partnerships, corporations or other entities shall be signed by an authorized representative of the corporation, partnership or entity.
 14. All transient merchants are subject to the statutory requirements set forth in N.J.S.A. 45:24-1 et seq., and shall be subject to the penalties set forth therein in the event of a failure to comply with any of said requirements.
 15. All applicants shall submit the original or a certified copy of a valid Certificate of Authority issued by the Director of the New Jersey Division of Taxation, pursuant to N.J.S.A. 54:32B-15, empowering the vendor to collect sales tax. Certificates shall not be required for the sale of property exempted from sales and use taxation pursuant to N.J.S.A. 54:32B-8.2. All vendors shall attach the original Certificate to their cart, stand, truck or other merchandising device, as required by N.J.S.A. 54:32B-15.
 16. All applicants selling food items for immediate consumption shall submit a copy of the Board of Health license.

4-3.6 APPROVAL OR REJECTION OF APPLICATION.

- a. Following the filing of a complete application and payment of the license fee as set forth in Subsection 4-3.11 to the Chief of Police, who shall conduct such investigation of the applicant, which may include fingerprinting and background checks of the business responsibility and character of the applicant or any employee or agent who shall engage in the licensed activity, for the protection of the public good.
- b. If, as a result of such investigation, the character of business responsibility of the applicant or any employee or agent who shall engage in the licensed activity is found to be unsatisfactory, the Chief of Police shall endorse on such application his disapproval and the reasons therefore. The Chief may disapprove an application if such a disapproval is based on one (1) or more of the following findings with respect to the applicant:
 1. Conviction of a crime of the fourth degree or higher, a disorderly persons offense, a petty disorderly persons offense, or a moving motor vehicle offense.
 2. Previous fraudulent acts or conduct.
 3. Records of breaches of solicitation contracts.
 4. Fraud, misrepresentation or false statements contained in the application for license.
- c. In the absence of such findings, the Chief of Police shall find the applicant satisfactory and shall endorse his approval on the application.
- d. The Township Council reserves the right to adopt such rules and regulations governing the investigation by the Police Department in the issuance of licenses pursuant to this article and the keeping of records thereof as the Township Council may deem necessary for the proper enforcement of this ordinance.

4-3.7 DENIAL OR ISSUANCE OF LICENSE.

- a. If the applicant or any employee or agent who shall engage in the licensed activity is found unsatisfactory by the Chief of Police, and he endorses his disapproval upon the application, and shall notify the applicant by mail that the application is disapproved and shall deny issuance of the license. Such notice shall be mailed within five (5) working days following the endorsement of disapproval by the Chief of Police.

- b. If the application is found to be satisfactory by the Chief of Police, the Chief of Police shall issue a license addressed to the applicant to conduct the business applied for. The license shall expire December 31st of the calendar year in which it is issued unless, by its terms, it expires prior to that time, and shall be limited to the express purpose set forth therein.
- c. If a license is issued, the applicant shall receive an identification tag from the Township Clerk. The identification tag shall be worn by the applicant in a conspicuous location while the applicant is engaged in a licensed activity.

4-3.8 REVOCATION OF LICENSE.

- a. Licenses may be revoked by the Chief of Police, or his designee, for any of the following causes:
 - 1. Fraud, misrepresentation or false statements contained in the application for license.
 - 2. Fraud, misrepresentation of false statement made in the course of carrying out activities pursuant to the license.
 - 3. Violation of any provision of this Article or violation of any Municipal Ordinance.
 - 4. Conviction of a crime of the fourth degree or higher, a disorderly persons offense, a petty disorderly persons offense, or a moving motor vehicle offense.
 - 5. Conduct of the business of peddling or soliciting in an unlawful manner or in such a manner as to constitute a breach of the peace or constitute a menace or disturbance to the residents of the Township.
- b. Notice of revocation shall be personally communicated to the licensee, and thereafter it shall be unlawful for him or any of his employees or agents to sell, offer for sale or distribute merchandise or services in the Township.

4-3.9 APPEAL.

Any person aggrieved by the action of the Chief of Police in the denial of an application for a license, or in the decision with reference to revocation of a license, shall have the right to appeal to the Township Council. Such appeal shall be taken by filing with the Township Clerk, 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 a hearing on such appeal. The Township Council shall set a time and place for hearing the appeal and a notice of the hearing shall be given to the applicant. The decision of the Township Council on the appeal shall be final and conclusive.

SECTION 4-3.10 GENERAL REGULATIONS.

It shall be unlawful for a person to:

- a. Attempt to peddle or distribute merchandise or printed material, or solicit funds or canvass for information, without first having identified himself as a peddler, solicitor, transient merchant or canvasser registered with the Township and display the license issued therefor.
- b. Have exclusive right to any location on public property.
- c. Enter or attempt to enter the land of any resident in the Township where such resident has posted a legible and reasonably prominent notice prohibiting such entry.
- d. Refuse to leave a private dwelling or property after having been once requested to do so by the owner or occupant hereof.
- e. Distribute obscene merchandise or printed material that advocates unlawful conduct.
- f. Litter the streets, public places or other property within the Township by any merchandise or printed material.
- g. Station, place, set up or maintain a cart, wagon, motor vehicle or other vehicle, or allow it to remain on any sidewalk in a way that would:
 1. Restrict, obstruct, interfere with or impede the pedestrians right of way;
 2. Restrict, obstruct, interfere with or impede the ingress or egress from the abutting property;
 3. Create or become a nuisance;
 4. Increase traffic congestion, cause or increase traffic delay or hazard;

5. Cause or create or constitute a danger to life, health or property.
- h. Solicit or offer to sell except between the hours of 10:00 a.m. and sunset Sunday through Saturday. The foregoing limitation shall not apply to mobile food vendors or ice cream trucks which shall be allowed to conduct business seven (7) days a week from 8:00 a.m. to 9:00 p.m..
- i. .
- j. Peddle using a cart of the dimensions of which exceeds two (2) feet in width, four (4) feet in length and four (4) feet in height including wheel height, while conducting business on any sidewalk.
- k. Use, set up, attach, place or permit the use of any table, crate, carton, rack, device or structure of any kind to increase the selling or display capacity of the peddler's cart.
- l. Station, place, set up or maintain a peddler's cart or allow it to remain on any sidewalk if to do so would reduce the unobstructed pedestrian right of way.
- m. Engage in the business of peddling within ten (10) feet of any location where the curb has been depressed to facilitate pedestrian or vehicle movement.
- n. Engage in the business of peddling on any sidewalk or along any street within fifteen (15) feet of any fire hydrant, crosswalk or driveway.
- o. Station, place, set up or maintain a peddler's cart or goods against display windows of fixed location businesses, nor shall they be within twenty (20) feet from an entranceway to any building, store, theater, library, school, museum, movie house, sports arena or other place of public assembly.
- p. Engage in the business of peddling on any sidewalk or along any street within ten (10) feet from intersecting streets or sidewalks.
- q. Engage in the business of peddling within thirty (30) feet of any location where another peddler is engaged in the business of peddling.
- r. Engage in the business of selling at any location without giving a

written receipt to each customer for any sale in excess of twenty (\$20.00) dollars. The receipt shall show clearly the seller's name, business address, license number, a description of the merchandise sold, and the purchase price, and shall be sequentially numbered.

- s. Engage in the business of peddling on any sidewalk or along any street within ninety (90) feet of a bus stop. For purpose of this section, the words "bus stop" shall include the sidewalk and the adjoining street where there is a designated bus stop.
- t. Sell food, drinks, ice cream, confections or other items for immediate consumption unless the peddler has available for public use his litter receptacle which shall be clearly marked and maintained for his patronage use, nor shall any peddler leave any location without first picking up, removing and disposing of any trash or refuse remaining from the sales made by him, nor shall any person sell food, drinks, ice cream, confections or other food items for consumption without having first received any permit or license required by the Board of Health for food handling.
- u. Leave any cart unattended at any time or place or leave the same overnight on any sidewalk.

4-3.11 APPLICATION FEE REQUIRED.

- a. Each application shall be accompanied by an application fee of One Hundred (\$100.00) Dollars for each individual solicitor or peddler, to compensate the Township of Mahwah for the cost of administering this article, and such fees shall not be refunded for any reason.
- b. No license issued under this article shall be used at any time by any person other than the person to whom it was issued.
- c. Where an organization has several agents peddling, soliciting, distributing merchandise or printed material or services, or canvassing, each agent shall pay the applicable application fee and shall be issued a separate license.

SECTION 4-3.12 EXEMPTIONS FROM PAYMENT OF APPLICATION FEE.

The following persons are expressly exempt from the payment of any application fees:

- a. Any solicitor for a nonprofit organization as defined in Section 4-3.2 of this

ordinance.

- b. Any person honorably discharged from the military service of the United States, in conformity with N.J.S.A. 45:24-9 and 24-10.
- c. Any person who is an exempt fireman, as defined by N.J.S.A. 45:24-9 and 24-10, possessing corresponding identification, in conformity with said statute.
- d. Any person holding a solicitation license or permit issued under any legislation of the United States government or by a state agency pursuant to statute.

4-3.13 THIS ARTICLE SHALL NOT AFFECT ANY OF THE FOLLOWING PERSONS OR ACTIVITIES:

- a. Any person engaged in campaigning for any elected public office or public question which is to be voted upon in the Township at a general, special, primary, or school board election; nor shall this article apply to the distribution of circulars or advertising with respect thereto.
- b. Any person engaged in the delivery, in the regular course of business, of goods, wares, merchandise, or other articles of personal property to the premises of persons ordering or otherwise entitled to receive same.
- c. Any nonprofit organization, as defined in Section 4-3.2 of this article, engaged in the solicitation of funds for charitable purposes solely from its members.
- d. Any person engaged in this solicitation of funds for a nonprofit organization, when solicitation occurs on premises owned or controlled by the person soliciting funds or with the permission of the person who owns or controls the premises.
- e. Federal census-taking and surveys taken pursuant to Federal, State or Local Laws.
- f. Any public utility, or its employees, which is subject to the regulation of the State Board of Public Utility Commissioners; provided, however, that such employees shall display the identification badge or card issued by the employer.

- g. Children enrolled in public and private elementary and secondary schools in the Township of Mahwah, including children peddling or soliciting for schools, school clubs and organizations, Cub Scouts, Boy Scouts, Brownies, Girl Scouts and similar youth groups.
- h. Any person engaged in the solicitation of funds for a Township of Mahwah fire company, first aid squad or police department.

4-3.14 PUBLIC DISCLOSURE.

All applications filed with the Chief of Police, whether or not a permit has been issued, shall be a public record and shall be available for public inspection during regular office hours.

4-3.15 PENALTIES.

Any person who shall solicit or peddle, or operate as a transient merchant within the Township in violation of any provision of this article shall be subject to the penalties provided for in Chapter I Section 1-5 of the Revised General Ordinances of the Township of Mahwah.

4-3.16 ESTABLISHMENT OF A NO-KNOCK REGISTRY.

- A. For the purpose of protecting residents from criminal activities and safeguarding their privacy, there is hereby established a No-Knock Registry of properties where canvassing and soliciting are prohibited. The No-Knock Registry shall be maintained by the Township Clerk.
- B. The Township Clerk shall prepare a list of addresses of those premises whose owners or occupants have notified the Clerk that canvassing or soliciting are not permitted on their premises. Notification shall be by the completion of a form, available online and at the Township Clerk's Office during normal business hours. The premises shall remain on the Registry unless the owners or occupants notify the Township Clerk, in writing, that they wish the property to be removed from the Registry. The Township Clerk shall update the list monthly. The inclusion of a premises on the Registry shall be deemed a revocation of any privilege or license to enter or attempt to enter the property.
- C. Owners or occupants who have requested to be listed on the Mahwah No-Knock Registry pursuant to Subsection A herein, may procure from the Clerk's Office a notice for display on the premises indicating the enlistment on the Mahwah No-Knock Registry. The notice shall indicate

which solicitors may contact the residents and shall read substantially as follows:

"These premises are listed on the Township of Mahwah's No-Knock Registry (Mahwah Code Sec. 4.3-16). You may not enter or attempt to enter these premises for the purpose of canvassing or soliciting, which includes offering to purchase real estate on behalf of any person or organization. Non-profit and political organizations are exempt from this law. Violation of Mahwah Code §4.3-16 may result in a fine of up to \$1,250.00 and/or up to 90 days community service."

This notice shall be prominently displayed on the owner's or occupant's door or adjacent to the door.

- D. The first notice shall be provided free of charge and may be picked up in person during regular business hours. If a replacement notice is required, the individual may pick up the replacement notice at the Clerk's office for a fee of \$5.00, which shall be payable to the Township Clerk. A fee of an additional \$1.00 per notice will be applied for any individual who desires to have a notice mailed to him or her, payable to the Township Clerk. Pursuant to N.J.S.A. 2C:18-3, "any owner or occupant who has listed his or her premises on this registry shall be deemed to have revoked any express or implied legal privilege or license to enter or attempt to enter the premises".
- E. The Township Clerk shall distribute the current Mahwah No-Knock Registry to a licensed canvasser or solicitor at the time of issuance of a license.
- F. Although the most current list of registrants on the Mahwah No-Knock Registry shall be provided by the Township Clerk, it is the responsibility of the canvasser or solicitor to have the most up-to-date list prior to engaging in any canvassing or soliciting.
- G. Any person convicted of violating this section upon competent evidence by an owner, occupant or other person with personal knowledge of such violation shall be subject to the following:
 - (1) First offense: A minimum fine of \$100.00 with a maximum of up to

- \$750.00;
- (2) Subsequent offense: A minimum fine of \$100.00 with a maximum of up to \$1,250.00 for each offense, together with community service for a period of up to 90 days; and
- (3) Any offense: In addition to the above, a permanent revocation of any license issued under the within Chapter.

- H. The Township shall post a No-Knock Registry application on the Township webpage and distribute to other media outlets as designated by the Township. The Township shall provide copies of the application to the public and undertake reasonable efforts in education and distribution in order to further public awareness of the No-Knock Registry.
- I. This section does not preclude an owner or occupant from filing any other appropriate complaint with the Mahwah Police Department, including a complaint for trespass.

SECTION II

If any part of this Ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portion of the Ordinance.

SECTION III

All other parts, portions and provisions of the Revised General Ordinances of the Township of Mahwah, except where inconsistent herewith. In the event of any such inconsistency, the terms and provisions of this Ordinance shall be deemed to govern.

SECTION IV

The terms and provisions of this Ordinance are hereby declared to be severable; should any section or portion thereof be held invalid or unconstitutional, such decision shall not affect the validity of any remaining sections hereof.

SECTION V

This Ordinance shall take effect immediately upon final passage and publication according to law.

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Dated: October 17, 2017

Attest



Robert G. Hermansen
Council President



Kathrine G. Coviello
Municipal Clerk

I, Kathrine G. Coviello, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 28 day of September, 2017.



Kathrine G. Coviello, RMC/CMC/MMC
Municipal Clerk