

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one:)

of Ilion

FILED
STATE RECORDS

MAY 14 2014

DEPARTMENT OF STATE

Local Law No. 2-2014 of the year 2014

A local law Amending Chapter 171 Peddling & Soliciting
(Insert Title)

Be it enacted by the Village Board of the
(Name of Legislative Body)

County City Town Village
(Select one:)

of Ilion as follows:

See Schedule A

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2014 of the (County)(City)(Town)(Village) of Village of Ilion was duly passed by the Village Board on May 5 2014, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

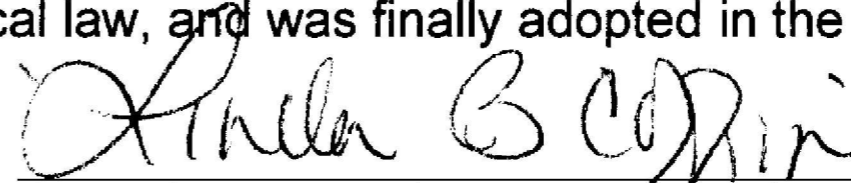
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 5/8/14

(Seal)

Schedule A

Village of Ilion Local Law 2-2014

BE IT HERBY ENACTED by the Board of the Village of Ilion that the following Chapter of the Code of the Village of Ilion be amended as follows:

Peddling & Soliciting

§171-1. Definitions.

A. As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT – Shall mean any Person applying for a license under this Chapter,

BOARD – Shall mean the Board of Trustees for the Village of Ilion, NY.

COMMERCIAL ESTABLISHMENT – Any building or structure or property which is used primarily for commercial purposes.

EMPLOYER – Any Person (as defined hereunder) that retains another person, regardless of age, whether as an employee, independent contractor, volunteer, or otherwise, to Solicit and/or Peddle in the Village on the Employer's behalf.

NEWSPAPER – Any newspaper of general circulation as defined by general law, any newspaper duly entered with the United States Post Office Department, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, shall mean and include any periodical or current magazine regularly published with not fewer than four issues per year sold to the public.

PEDDLE – To go from house to house, from store to store, from place to place or from street to street or to stand in a fixed or stationary position, or any combination thereof, to sell and make immediate delivery or offer for sale and delivery any goods, wares, merchandise or provisions in possession of the seller at any place within the Village of Ilion other than from a fixed place of business. The word "Peddle" shall also mean any solicitation for towing, the sale or offer of sale of merchandise or services or the offer of services at or near the place of a motor vehicle accident.

PEDDLER – Any Person, or any Employer that Peddles, as those terms are herein defined, whether directly or indirectly, and whether in person or through another person or employee. The term "Peddler" shall include any Person driving a "Peddling Vehicle."

PEDDLER'S LICENSE- Any Peddler's License issued pursuant to this section, including without limitation Stationary Peddler's Licenses.

PEDDLING VEHICLE – Every device in, upon, or by which any Person or property is or may be transported or drawn upon a highway, particularly designed for the sale at the vehicle of food, beverages, ice cream and other items intended for human consumption or for the sale of merchandise at the vehicle or for services rendered or to be rendered in, on, or at the vehicle as, for example, in the selling of flowers or providing landscaping services.

PERSON – Any person, any firm, partnership, association, corporation, company or organization of any kind, or any combination thereof.

PRIVATE PREMISES – Any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, whether inhabited, temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, sidewalk, driveway, porch, steps, vestibule, gazebo, or mailbox belonging to or appurtenant to such dwelling, house, building or other structure.

PUBLIC PLACE – Any and all streets, boulevards, avenues, lanes, alleys, or other public ways and any and all public parks, squares, spaces, plazas, grounds and buildings, and any and all property owned by the Village of Ilion, NY.

SOLICIT – To go from house to house, from street to street, from place to place or from store to store to sell or take orders for goods, wares, merchandise or provisions for future delivery or for services to be performed or for information to be obtained, or to distribute advertising matter, or for the purpose of obtaining contributions of money or of goods, wares, or provisions at any place within the Village of Ilion, NY.

SOLICITOR – Any Person, or any Employer that Solicits, as herein defined, whether directly or indirectly, and whether in person or through another person or employee.

STATIONARY PEDDLER – A Peddler who remains at a stationary location.

VILLAGE – The Village of Ilion, NY.

VILLAGE CLERK – The Village Clerk of the Village of Ilion, NY.

B. Words singular in form may include the plural, and any words plural in form may include the singular; and words in the masculine gender shall include the feminine and neuter genders.

§171-2 . License required; responsibility of organization

- A. It shall be unlawful for any Person or Employer to Peddle or Solicit within the Village without having first obtained a valid license therefor, as provided hereunder.
- B. Every Employer shall share the same responsibilities and liabilities with respect to penalties and obligations hereunder, including in the event that a Person Peddling or Soliciting on the Employer's behalf Peddles or Solicits without having first obtained a valid license(s).

§171-3. Application for license.

Applicants must file with the Village Clerk an application in the form of a sworn affidavit, in duplicate, on the form to be supplied by the Village Clerk. The Applicant shall give the following information, as well as any additional information reasonably requested by the Village Clerk:

- A. Valid, photographic identification, showing the Applicant's name and current address .
- B. Any alternate name by which the Applicant went, including without limitation any maiden name.
- C. The address and telephone number of the Applicant (both physical and mailing), and, if the Applicant has not resided at his or her current address for at least 2 years, the Applicant's prior address(es)
- D. Dates of operation and location requested, including whether the Applicant is seeking a license as a Stationary Peddler.
- E. Whether the Applicant has ever applied previously for any Village license or permit, and whether such previous application was accepted or denied.
- F. Whether the Applicant will be using at any time a Peddling Vehicle and, if so, a description of the Peddling Vehicle, including license number, make and model, if any.
- G. Whether the Applicant is Peddling for a charitable organization, and whether that charitable organization has complied with the applicable provisions of New York Executive Law Article 7-A, as amended.

H. A brief description of the nature of the business, the kind of services, goods or property to be Peddled or Solicited and the name and address of the person or business which supplies the services, goods or property to be Peddled or Solicited.

I. Applicants for a Stationary Peddler's license, in addition to all other information contained in this §171-3, shall provide the Village Clerk with:

1. A description of the improved property upon which the Applicant wishes to locate his or her Peddling Vehicle, including:
 - a. The location of the site and adjacent roadway(s);
 - b. A site plan showing ingress, egress and parking on the proposed site; and
 - c. The location where the Applicant will park his Peddling Vehicle on the improved property.
2. The name, telephone number, and written consent of all property owners of the location at which the Peddler is to be situated.
3. Proof of motor vehicle insurance in an amount no less than \$100,000 for personal injury and property damage suffered by any person as a result of the Peddler's use of the property.
4. Proof of a valid New York State motor vehicle registration and proof of a valid New York State inspection for the Peddling Vehicle to be used by the Applicant.
5. Proof of a New York State sales tax identification number.

J. If the Applicant is employed, hired, or volunteering to Peddle or Solicit, the name, address, and telephone number of the Employer for whom the Applicant is working or volunteering, together with credentials establishing the precise relationship and a written, and signed statement from the Employer authorizing the Applicant to so Peddle or Solicit on the Employer's behalf.

K. Two photographs of the Applicant taken not more than 60 days prior to the date of filing of the application, which pictures shall not be larger than 1 ½ by 1 ½ inches, showing the head and shoulders of the Applicant in a clear and distinguishing manner.

§171-4. Investigation; issuance of license

A. Upon receipt of the sworn application, the Village Clerk shall forward a copy thereof to the Village Police Department for an investigation of the Applicant and the Employer, if any. If the Village Police Department's investigation indicates that the Applicant or Employer, if any, has a police record or otherwise would be ineligible under any of the causes stated in §171-4(B) and/or §171-12(A) hereof, the application shall be denied.

B. Upon receipt of the sworn application for a Stationary Peddler's license, the Village Police Department, in addition to the investigation stated in §171-4(A) above, shall determine whether the proposed location:

1. Has sufficient parking and ingress and egress;
 - a. In determining whether the proposed site has sufficient parking, the Village Police Department shall consider, but is not limited to, the following criteria;
 - i. The existing use(s) on the proposed site;
 - ii. The overall area of parking surface currently available on the proposed site;
 - iii. The physical dimensions of the overall site and the physical dimensions of the parking lot; and
 - iv. The degree of the existing parking relaxation at the proposed site, if any.
2. Causes no parking, traffic, and/or other-public safety concerns;
3. Will not serve as a detriment to the character and well-being of the surrounding neighborhood; and
4. Complies with the permitted locations requirements set forth in §171-5(C) below.

C. Upon the return of the application, if the Applicant and the Employer, if any, have no police record, and if, in the case of a Stationary Peddler's license, the Village Police Department determined that the location complies with the requirements outline in §171-4(B), and if all other necessary information has been provided by the Applicant to the Village Clerk, the Village Clerk will present to the Board at its next, regularly scheduled board meeting the application for the Board's approval, which shall not be unreasonably withheld.

D. Upon the approval of the application by the Board, the Village Clerk shall prepare and issue to the Applicant his license. The license shall contain the Village Seal, the signature of the issuing officer, the name and address of the Applicant, the name, address and telephone number of the Employer (if any), the Applicant's photo provided pursuant to §171-3(K), the kind of goods and/or services to be Peddled or Solicited pursuant to the license, the amount of the fee paid, the license number, the date of issuance and the date of expiration of such license, any restrictions or stipulations on the license, as well as the state license number or other identifying description of any Peddling Vehicle, and any other information as reasonably required by the Village Clerk.

E. The Village Clerk and the Board shall not issue a license under this chapter unless the Applicant has fully complied with all conditions of this chapter.

F. The Village Clerk shall keep a record of all licenses issued, revoked, or denied.

§171-5. Stationary Peddling

- A. Any Person possessing a license for Stationary Peddling shall be permitted to Peddle while remaining stationary subject to the restrictions set forth herein.
- B. The number of active Stationary Peddler's licenses issued hereunder shall be limited to a total of five.
- C. Permitted locations.
1. In the interest of public safety and due to traffic hazards caused by stopping of motor vehicles, no Peddler shall conduct business or suffer or permit his Peddling Vehicle to remain stationary for the purpose of Peddling along any portion of a state highway or within 500 feet of an entrance or exit ramp of any such highway.
 2. No Peddler shall Peddle his wares at or within a one-thousand-foot radius of any Village park or other Village recreation facility in which the Village contracts with a concessionaire, unless specifically licensed by the Board.
 3. It shall be unlawful for any Person to Peddle within 200 feet of any property on which a church or school is located unless a letter of consent is obtained from said church or school giving the Stationary Peddler permission to Peddle at the proposed location.
- D. Permitted hours of operation.
1. A Stationary Peddler shall only Peddle between the hours of 9:00 a.m. and 8:00 p.m.
 2. The Peddling Vehicle may not remain on the subject property between the hours of 9:00 p.m. and 7:00 a.m. unless the Person is the owner of the property or has written authorization from the owner of the property.
- E. The granting of a Peddler's license under this section is limited to one per Applicant.

§171-6. Other licenses, permits and certificates; signs

- A. If the Applicant for a Peddler's or Solicitor's license uses scales or measures in his business, he shall also submit with his application for a license a certificate issued by the Herkimer County Sealer of Weights and Measures that his scales or measures have been tested and sealed.
- B. If the Applicant for a Peddler's or Solicitor's license is to handle food in any form, he shall submit with his application evidence that he has complied with the provisions of any and all

applicable state and federal public health laws and regulations, including without limitation New York State Department of Health regulations and New York State Agriculture and Markets Law.

C. Any Person or Employer who is required to be registered with New York State Executive Law §172, as amended, relating to the solicitation and collection of funds for charitable purposes must exhibit evidence of this registration to the satisfaction of the Village Clerk before the Village Clerk may issue a license.

D. All Applicants applying for a Peddler's license pursuant to this chapter who are also operators of Peddling Vehicles shall be required to produce a valid, up-to-date driver's license.

E. Every Peddling Vehicle shall be equipped in the front and rear with a sign inscribed with the legend "Caution. Watch out for children," except on those Peddling Vehicles having signs already in existence which are inscribed with the same or similar legend.

§171-7. Fees; exemptions.

A. For each Person proposing to Peddle or Solicit, whether on foot, from a Peddling Vehicle or otherwise, the fee(s), which shall be relative to the term of the license, shall be as set forth by resolution of the Board.

B. Any Person engaged in interstate commerce shall be exempt from paying any fee either for applying for or receiving a license under this Chapter. However, any such exempt Person still must apply for a license with the Village Clerk and must abide by all other provisions of this Chapter.

C. In the event of the loss or destruction of any license issued pursuant to this chapter, the license may be replaced by the application thereof to the Village Clerk, together with the return of the destroyed license, if feasible, and the payment of a fee which shall be as set forth by resolution of the Board.

D. The fees shall include the fee for the application for a license and shall not be refundable in the event the application is denied.

E. Any honorably discharged veteran of the armed services of the United States who has obtained a license issued by the Herkimer County Clerk as provided by the New York General Business Law shall be exempt from paying any fee; however such veteran still must apply for a license pursuant to this chapter.

F. Charitable organizations that have complied with the applicable provisions of New York Executive Law Article 7-A, as amended, and Persons Peddling or Soliciting for such charitable organization shall be exempt from paying any fee; however any such charitable organization and all Persons Peddling or Soliciting for such charitable organization still must apply for licenses pursuant to this chapter.

§171-8. Licenses; issuance; form; display; transferability

A. To each Person licensed pursuant to this chapter the Village Clerk shall issue a license which shall bear the word “peddler” or “solicitor,” the number of the license and the date on which it was issued, and the date on which it expires, in characters or figures which are permanent or plainly discernible. The license shall be worn constantly by the Person to whom it was issued on his outer garment in such a way as to be conspicuous during the time the Person is Peddling or Soliciting for the purpose for which he has been licensed.

B. No license issued pursuant to the provisions of this chapter may be transferred from one Person to another Person, nor shall the license so issued be used or worn at any time by any Person other than the one to whom it was issued.

C. Every Peddler or Solicitor licensed pursuant to this chapter shall have his license in his immediate possession at all times when Peddling or Soliciting and shall display the same upon the demand of any person.

§171-9. Persons and activities exempt from the application of this chapter.

With the exception of §171-11 of this chapter, no other provision in this chapter shall be held to apply to:

1. Any Person selling any goods, wares, or merchandise at wholesale to commercial businesses dealing in such any goods, wares, or merchandise.
2. Persons under the age of eighteen (18) years, provided such minor children are not Peddling or Soliciting for an Employer, or are Peddling or Soliciting for designated youth groups.
3. Persons who themselves or through their employees vend, sell or dispose of products from their own farms and gardens.
4. Berry, fruit, or flower pickers who sell such berries, fruits, or flowers of their own picking.
5. Persons engaged in the distribution of Newspapers.

6. Persons who keep, maintain, or operate a store, market, shop or similar permanent place of business which operates, runs, or uses a cart, wagon, truck or other vehicle for the purpose of making delivery of goods, wares, merchandise or provisions bought or ordered at his place of business, nor to any person solely engaged in the business of delivering goods, wares, merchandise or provisions for or on behalf of one or more places of business.

§171-10. Restrictions on use of public ways; determination of police officers.

A. It shall be unlawful for any Peddler or Solicitor to have any exclusive right to any location in any Public Place in accordance with the following prohibitions:

1. It shall be unlawful for any Person to Solicit and/or Peddle within 200 feet of any property on which a church or school is located unless a signed letter of consent is obtained from said church or school giving the Stationary Peddler permission to Peddle at the proposed location, and such signed letter of consent is delivered to the Village Clerk when such Person is applying for a license.
2. Other than a properly-licensed Stationary Peddler, a Peddler or Solicitor shall not be permitted to stand in one Public Place for more than 15 minutes.
3. A Peddler or Solicitor shall not be permitted to stop in one Public Place within 200 feet of a previous stop.
4. A Peddler or Solicitor shall not be permitted to Peddle or Solicit in any congested area where his operation might impede pedestrian or vehicular traffic.
5. It shall be unlawful to Peddle or Solicit any business whatsoever at the scene of an accident involving one or more motor vehicles within the Village.

B. For the purposes of this section, the judgment of any peace officer or police officer exercised in good faith shall be deemed conclusive as to the existence of congestion and as to whether there is any impediment of pedestrian or vehicular traffic.

§171-11. Prohibitions.

A. It shall be unlawful for any Person to enter upon Private Premises for the purpose of Peddling or Soliciting where there is posted, painted, or otherwise affixed or displayed in plain view a “no peddlers” or “no solicitors” sign, or words to that effect.

B. It shall be unlawful for any Person to enter upon Private Premises for the purpose of Peddling or Soliciting except between the hours of 9:00a.m. and 8:00p.m. on any day of the week, or between other times reasonably mandated by the Board.

C. It shall be unlawful to Peddle or Solicit individuals other than the owner, or his duly authorized representative, of any Commercial Establishment without having first obtained the owner's or representative's express written permission to do so.

D. It shall be unlawful to Peddle or Solicit other than at the location(s) stated in the license.

§171-12. Revocation of license.

A. Licenses issued under the provisions of this chapter may be revoked by the Village Clerk, after notice and an opportunity to be heard, for any of the following causes:

1. Fraud, misrepresentation, or false statement contained in the application for license.
2. Fraud, misrepresentation, or false statement made in the course Peddling or Soliciting.
3. Any violations of this chapter.
4. Conviction of any crime or misdemeanor involving moral turpitude.
5. Conducting the business of Peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the residents of the Village.
6. Failing to clean up debris and waste from Peddling and/or Soliciting activities.
7. Peddling any services, goods or property not described in the application for a license herein or the Peddling of any services, goods or property which are dangerous or injurious to the purchaser.
8. Failure to abide by any restrictions or stipulations placed on the license.

B. Notice of the hearing for the revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the Peddler or Solicitor at his last known address at least five days prior to the date set for the hearing. Failure to appear at the hearing, or at any rescheduled hearing, shall result in an immediate revocation of the license.

§171-13. Appeals.

Any Person aggrieved by the action of the Village Clerk in the denial of an application for a license, as provided in this chapter, or in the decision of the Village Clerk with reference to the revocation of a license, as provided in the chapter, shall have the right to submit, within 10 days of the Village Clerk's denial or revocation, a request to appeal (the "Appeal") with the Mayor,

with a copy of such request submitted contemporaneously to the Village Clerk.. Any Person so appealing shall submit as a part of his or her Appeal, a written statement setting forth fully the Person's grounds for appeal. The Board shall set a time and place for a hearing on the Appeal and notice of the hearing thereon shall be mailed to the appellant at his last known address at least five days before the date set for the hearing. The decision and order of the Board on any Appeal shall be final and conclusive.

§171-14. Bond, Written Reciept.

A. An application for a license as a Solicitor who demands, accepts or receives payment or deposit of money in advance of final delivery shall also be accompanied by a bond to the Village, approved as to form and surety by the Village Attorney, in the penal sum of ten thousand dollars (\$10,000.00) with a sufficient surety or sureties or sufficient collateral security, conditioned for making a final delivery of the goods, wares or merchandise ordered or services to be performed in accordance with the terms of such order or, failing therein, that the advance payment on such order be refunded.

B. Any person aggrieved by the action of any licensed Solicitor shall have a right by action on the bond for the recovery of money or damages, or both.

C. Such bond shall remain in full force and effect, and, in case of a cash deposit, the Village shall retain such deposit, for the greater of ninety (90) days after the expiration of any such license or thirty (30) days after the time when the Solicitor anticipates delivery of the merchandise.

D. The Solicitor must provide any customer who tenders advance payment or deposit of money, simultaneous with such advance payment or deposit, a written receipt which shall state:

1. The amount of such advance payment or deposit;
2. A "no later than" date upon which delivery of the goods, wares or merchandise ordered or service is to be made; and
3. All necessary information for which such customer may need to submit a claim against the Solicitor's bond in the event the Solicitor fails to provide timely such goods, wares, merchandise or services.

§171-15. Enforcement; reports and records of offenses.

It shall be the duty of all duly authorized police officers of the Village to enforce the provisions of this chapter, to make arrests or issue appearance tickets or other legal process for offenses against the provisions of this chapter and to report to the Village Clerk all offenses observed, whether or not any criminal prosecution is based thereon. The Village Clerk shall record all reports of offenses and convictions for offenses against this chapter.

§171-16. Penalties for offenses.

Any person committing an offense against any provision of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punishable for each offense by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than fifteen (15) days, or both.

§171-17. Severability.

If any section, subdivision, sentence, clause, phrase or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the section, subdivision, sentence, clause, phrase or part directly involved in the controversy in which such judgment shall have been rendered.

§171-18. Effect on Village Zoning

Nothing herein contained shall be construed to infringe upon, impair or alter any provision in the Village zoning or building codes.

THIS LAW SHALL TAKE EFFECT IMMEDIATELY UPON ITS FILING WITH THE SECRETARY OF STATE.