

LOCAL LAW NO. 9 of 2024

A LOCAL LAW amending chapter 143 of the Code of the Town of Southampton.

BE IT ENACTED by the Town Board of the Town of Southampton as follows:

SECTION 1. Legislative Intent.

The Town Board seeks to simplify the process for home improvement contractors to become licensed, while at the same time creating clearer standards for the appeals process, and process for hearing complaints against home improvement contractor's grounds for suspension and/or revocation. The Town Board also wishes to disband the current license review board, and merge its functions with the already established public safety commission as it already hears matters of a substantially similar subject matter. Merging these boards can serve to streamline government processes and reduce waste by consolidating duplicative services.

At the same time, the Town Board wishes to re-organize procedures and standards for licensed home improvement contractors including but not limited to: expanding and clarifying definitions, insurance requirements, vehicle identification, and display of license requirements.

SECTION 2. Amendment.

Chapter 143 of the Southampton Town Code is hereby amended by deleting the stricken words and adding the underlined words as follows:

§ 143-1 Definitions. As used in this chapter, the following terms shall have the meanings indicated:

HOME IMPROVEMENT

A. Excluding work in the electrical and plumbing fields as defined by § 563-126 of the Suffolk County Code, any repair, remodeling, alteration, conversion, modernization, home raising or home elevating services, improvement or addition to residential property, and includes but is not limited to: hearing and air conditioning, awnings, bathrooms, cabinets, carpentry, central vacuum cleaners, chimneys, decks, dormers, drainage systems, driveways, ductwork, extensions, exterminators, fencing, flagpoles, flooring, fumigation, handyman/handyperson services, heating, kitchens, masonry, painting, paint removal, railings, renovations, roofing, sprinklers, storms and screens, sports courts, tile installers, ventilating, water weatherproofing, driveways, swimming pools, siding, insulation, roofing, windows, terraces, patios, landscaping, fences, porches, portable and permanent spas, power-washing, garages, solar energy systems, flooring, basements, waterproofing, erosion protection structures and improvements, such as a jetty, groin, revetment, breakwater, bulkhead, geotube, sandbag installation or other artificial beach nourishment project which requires a permit pursuant to Chapter 111 or 138 of the Town Code, improvements made pursuant to Chapter 123 or 169 of the Town Code to bring residential property into conformance with applicable flood prevention regulations, placement of structures on pilings or relocation of structures, and other improvements of residential property and all structures or land adjacent to it, landscaping and arboriculture, which as used herein shall mean tree sprayers, tree pruners, tree stump removers and all other tree services;

B. "Home improvement" shall not include:

The construction of a new home or work done by a contractor in compliance with a guaranty of completion on new residential property or the sale of goods by a seller who neither arranges to perform nor performs, directly or indirectly, any work or labor in connection

with the installation of or application of the goods or improvements to residences owned by or controlled by any government subdivision.

(2) The sale of goods to a home improvement contractor by a supplier who neither arranges to perform nor performs, directly or indirectly, any work or labor in connection with the installation or application of the goods or materials.

(3) The sale or installation of appliances, such as stoves, refrigerators, freezers, room air conditioners, dishwashers or clothes washers or dryers, which are designed for and to be removable from the premises without material alteration thereof.

(4) The sale or installation of decorative goods or services, such as draperies and carpets.

HOME IMPROVEMENT CONTRACT An agreement for the performance of home improvement between a contractor and an owner, and where the aggregate contract price specified in one or more home improvement contracts, including all labor, services and materials to be furnished by the contractor, exceeds \$500. All contracts for home improvements shall conform to the requirements of General Business Law § 771.

HOME IMPROVEMENT CONTRACTOR A person who conducts or engages in a home improvement business and who performs or undertakes or agrees to perform or undertake a home improvement.

HOME IMPROVEMENT GOODS OR SERVICES Goods and services which are bought or provided and/or installed in connection with home improvement. Such home improvement goods and services include texture coating, fencing, air-conditioning and heating equipment and any other goods which, at the time of sale or subsequently, are to be so affixed to real property by the home improvement contractor as to become part of real property, whether or not severable therefrom.

[Amended 5-12-1998 by L.L. No. 13-1998]

HOME RAISING, MOVING, AND HOME ELEVATING SERVICES

Any services involving the separation of a house, or part of a house, from its foundation. Home raising or home elevating services shall include, but not necessarily be limited to, the temporary raising of a house or part of a house off of its foundation with hydraulic jacks and the shoring and leveling of a house.

HOME MAINTENANCE

The keeping in a state of repair or efficiency residential property, as defined herein. Such work shall not include alteration of or additions to the original design or function of the residence and shall be limited to the simple repair of existing facilities and systems. For the purpose of this article, "home maintenance" work shall be considered minor, casual and inconsequential in nature when performed in connection with the seasonal opening and closing of residences.

LICENSEE

A person permitted to engage in the home improvement business under the provisions of this chapter.

OWNER

Any owner of residential property, tenant or any other person who contracts for the services of a home improvement contractor or the person entitled to performance of the work of a home improvement contractor pursuant to a contract.

PERSON

An individual, firm, partnership, corporation or other entity.

PLACE OF BUSINESS Any shop, residence, place or premises from which a home improvement business is transacted.

RESIDENTIAL PROPERTY A one- or two-family house and property associated therewith.

SALESPERSON

Any individual who negotiates or offers to negotiate a contract for a home improvement contractor with an owner or solicits or otherwise endeavors to procure a contract from an owner on behalf of a home improvement contractor, whether or not such individual is an employee of the home improvement contractor.

§ 143-2 License required. § 143-2(a) Unlicensed Contractor. No person shall conduct or engage in any home improvement business without first obtaining, and maintaining in effect at all times thereafter, a license from the Southampton Town Land Management Administrator or designee

§ 143-2(b) Unlicensed Contractor Fees. An unlicensed home improvement contractor shall not collect any fee, deposit, payment, money, or any other form of consideration while engaged in any home improvement business, including but not limited to improvements upon real property located within the Town of Southampton and/or any incorporated village which has adopted by reference § 143 of the Southampton Town Code.

§ 143-2(c) Unlicensed Contractor Liens. An unlicensed home improvement contractor shall not have standing to record a lien in relation to any home improvement business, including but not limited to improvements upon real property located within the Town of Southampton and/or any incorporated village which has adopted by reference § 143 of the Southampton Town Code.

§ 143-2(d) Contracts Required \$500 and over. No licensed home improvement contractor shall collect any fee, deposit, payment, money, or any other form of consideration in excess of \$500.00 without executing a written home improvement contract while engaged in any home improvement business.

§ 143-3 Exceptions. No license shall be required under this chapter in the following instances:

- A. An employee of a licensed home improvement contractor.
- B. An architect, professional engineer or any other person who holds a state regulated license requiring standards of competency or experience as a prerequisite to engaging in such profession, and who is acting exclusively within the scope of the craft or profession for which he is currently licensed.

§ 143-4 Application fee and term of license.

A. The fee for a home improvement contractor's license shall be \$150, or as amended by fee schedule set by the Town Board by resolution, to be paid upon the filing of each application. A license issued hereunder shall be valid for a period of one year pursuant to New York Town Law §137. subject to the provisions contained in §143-7 of this chapter.

B. A late fee of \$75 shall be charged in addition to the application fee, for a renewal application postmarked or received 30 days after the expiration of a home improvement contractor license.

C. The license term and fees discussed in § 143-4A and above shall only have effect on license issuances or renewals occurring on or after January 1, 2025. Any licenses issued prior to January 1, 2025, shall remain subject to the license terms in effect at their issuance and shall only become subject to the requirements of § above upon their next renewal.

§ 143-5 Insurance required.

- A. A home improvement contractor shall submit a NYS (New York State) C-105.3 form certificate of insurance covering liability and workers' compensation, or proof of exemption on a NYS CE-200 form, upon applying for a home improvement license and shall maintain said policies and file current certificates indicating said coverage during the period the license is in effect.
- B. All certificates of public liability and property damage insurance and workers' compensation shall be furnished to the Office of Land Management by the applicant prior to the initial issuance of the license or at any time there is a change in insurance carrier. At the time of license renewal, a sworn affidavit shall be required stating that all insurance is in effect or a certificate of insurance filed.
- C. A home improvement contractor shall provide proof of general liability insurance, providing coverage with limits of at least \$1,000,000.00 (one million dollars) per occurrence to include bodily injury and damage to property, and \$2,000,000.00 (two million dollars) in the aggregate, with the "Town of Southampton" named as a certificate holder.
- D. Failure to maintain coverage will provide grounds for suspension or revocation of the license pursuant to § 143-12.

§ 143-6 Use, transferability and display of license

A. The issuance of a license is not an endorsement by Southampton Town of work performed by a home improvement contractor, but is rather intended to show a home improvement contractor has appropriately registered, and provided proof of insurance to the Town. Issuance of a shall create no presumption that the licensee is in compliance with the provisions of this chapter or any other section of law.

B. No license issued under this chapter shall be transferred or assigned.

C. A license issued hereunder may not be construed to authorize a licensee to perform any work or engage in any kind of business which is reserved to qualified licensees under separate provisions of state or Town law.

D. License number and proof of license must be conspicuously displayed along with any required Town, and/or County permits and be made available for inspection at every job site. The inability to present a valid license by a worker at the job site shall be considered prima facie evidence of noncompliance with this chapter, and a summons may be issued.

E. Every licensee shall, within 10 days after a change of control in ownership or of management or of address or of trade name, notify the Land Management Administrator or designee of such change, in writing.

§ 143-7 Application requirements.

1. Applicants for licenses or renewals shall complete an online application to the Land Management Administrator or designee. The applicant (or authorized representative) shall attest to their identity, (including their ability to bind corporate and other legal entities), and provide proof of a state issued government ID or US Passport (Including representatives of corporate entities), applicable fees, and proof of necessary insurance.

2. Where the applicant is a corporation, firm, trust, partnership or other legal entity, the applicant shall provide proof of a Certificate of Good Standing or Certificate of Existence which may be obtained by submitting a written request to the New York State Department of State, Division of Corporations, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.
3. Corporate entities with a status other than "Active" and those deemed not to be in good standing by the New York Department of State, Division of Corporations shall be denied a home improvement contractor license.

Applications shall set forth the following information:

4. The name, entity name, assumed name, trade name and business address of applicant.
5. If the applicant is an individual, their legal name and residence address.
6. Whether or not there are any outstanding liens or judgments against the applicant.
7. Whether or not the applicant or any member, partner, officer, stockholder or employee thereof ever engaged in a home improvement business under another name or for another person.
8. Information regarding convictions of the applicant and/or its employees, stockholders or directors for violations of local, county or state law within the past three years for building, zoning, sanitary, fire, electrical, health or environmental violations. For purposes of this subsection, convictions of employees shall include those imposed in connection with home improvements performed on behalf of the applicant/employer.

§ 143-8 (Reserved)

§ 143-9 Issuance of license and registration.

After the filing of an application for a license, or renewal thereof and payment of the required fee, Land Management Administrator or designee shall examine the application for completeness, and Board shall issue a license unless it finds that the applicant is unfit or undesirable to carry on such home improvement, business, in which event said application shall be denied.

§ 143-10 Denial of license or registration certificate; notification; appeal.

A. The Land Management Administrator or designee shall notify the applicant of a denial of an application for a license. Service of such notice shall be via e-mail, addressed to the address set forth in the application. The notice shall include or be accompanied by a statement that the applicant may request an appeal before the Public Safety Commission as designee of the Town Board by filing a written request therefor with the Town Clerk within 30 days of the date of denial. The Town Clerk shall give the appealing party at least ten days' written notice of the time and place of such hearing. The determination of the Public Safety Commission on behalf of the Town Board shall be final and conclusive.

Complaints against home improvement contractors.

A. The Public Safety Commission shall hear and render a final determination regarding a complaint filed by a homeowner against a licensed home improvement contractor. Such complaint must be made in writing and must allege one or more grounds listed within this section, and may be the basis for the Public Safety Commission to order a suspension or

revocation of the license upon a finding that the licensee has committed a violation of this chapter, by clear and convincing evidence that he or she has violated any one of the following provisions:

- (1) Fraud, misrepresentation or bribery in securing a license.
- (2) The making of any false statement as to a material matter in any application for a license.
- (3) Collection of a fee, deposit, payment, money, or any other form of consideration in excess of \$500.00 without execution of a written home improvement contract.
- (4) Failure to timely perform or complete contracts.
- (5) Failure to display the license or registration certificate as provided in this chapter (Including on site, and within vehicles).
- (6) Failure to comply with any demand to appear before the Public Safety Commission.
- (7) Manipulations of assets, fixtures, or accounts or by fraud and/or bad faith or in solicitation of business from owners.
- (8) Violation of any provision of the Southampton Town Code, or applicable Village Code (Where the alleged incident occurred) where a village has designated Southampton Town to process, review, and issue final determinations in respect to licensing of home improvement contractors by local law.
- (9) Abandonment (More than 15 days) or willful failure to perform, without justification, any home improvement, project engaged in or undertaken by a home improvement, contractor or willful deviation from plans or specifications approved by a building permit in any material respect.
- (10) Making a substantial misrepresentation in the solicitation or procurement of a home improvement, making any false promise of a character likely to influence or persuade or induce.
- (11) Performing work outside of the scope of a home improvement contractor, particularly within the areas of plumbing, or electrical improvements, modifications, and/or alterations.
- (12) Preparing or accepting any mortgage, promissory note or other evidence of indebtedness upon the obligations of a home improvement, that it recites a greater monetary obligation than the agreed consideration for the home improvement, work.
- (13) Directly or indirectly publishing any advertisement relating to home, improvements available within the Town of Southampton, and designated jurisdictions, that fails to include the home improvement contractor's assigned licensing number within the Town of Southampton, and/or incorporated villages which have designated the Town of Southampton by local law to process, review, and issue final determinations in respect to licensing of home improvement contractors. Directly or indirectly publishing any advertisement relating to home improvements which contain an assertion, representation or statement which is false, deceptive or misleading, or otherwise fails to comply with regulations or guidelines of the Federal Trade Commission.
- (14) Violation of the building, sanitary, fire, zoning, electrical, plumbing, environmental and health laws of the Town, village, county or state.
- (15) Failure to notify the Land Management Administrator or designee of any change of control in ownership, management or business name or location.
- (16) Conducting a home improvement, business in any name other than the one in which the home improvement contractor is licensed.
- (17) Failure to conduct home improvements in a skillful manner as defined in §777 of the General Business Law of the State of New York.

B. Procedure.

- (1) The Public Safety Commission shall determine whether not it will take has jurisdiction of any complaint submitted to it. In the event that it shall deny jurisdiction, such determination shall be in writing, and a copy shall be mailed to the complainant.

§ 143-12 Suspension or revocation of license or registration certificate.

- A. The Public Safety Commission shall have the power to suspend or revoke a license if it determines, after a public hearing, that the licensee has violated any provision of § 143-11. Anyone who applies to be licensed following a revocation shall be subject to pay an additional "in violation" fee as determined by Town Board fee schedule.
- B. The Public Safety Commission shall hold a hearing once it determines it has jurisdiction over a complaint. It shall notify the licensee that a hearing will be held before the Public Safety Commission to determine whether their license should be suspended or revoked. Such notice shall specify the time and place of the hearing and the ground or grounds alleged against a licensed home improvement contractor for suspension or revocation which will be the subject of the hearing. Such notice shall be in writing, shall be served at least 10 days prior to the hearing and shall be served personally or by certified mail, return receipt requested, addressed to the place of business of the licensee. A copy of such notice and a copy of the original complaint filed against any registration certificate holder shall be forwarded to the Suffolk County Executive's Office of Consumer Affairs.
- C. At the time and place set for the hearing, Public Safety Commission shall give the licensee and the complainant a reasonable opportunity to be heard. Other interested parties may be heard, but shall be limited to 3 minutes per speaker. The decision of the Public Safety Commission shall be in writing, and shall specify the ground or grounds upon which the decision is based, and shall be final and conclusive. Failure to appear for a scheduled hearing is ground for a 30-day suspension of a home improvement contractor license. Failure to make contact with the Land Management Administrator or designee to turn in a license pursuant to suspension shall be a ground for a 1-year revocation. Anyone who applies to be licensed following a revocation shall be subject to pay an additional "in violation" fee as determined by Town Board fee schedule.
- D. If the Public Safety Commission determines that the license of a licensee should have their license suspended or revoked, the Public Safety Commission shall notify the licensee of such in writing. Such notice shall be served personally or by certified mail, return receipt requested, addressed to the place of business of the licensee. A licensee shall immediately surrender their license to the Land Management Administrator or designee upon its suspension or revocation by the Public Safety Commission.

§ 143-13 Penalties for offenses.

- A. Any person who shall conduct or engage in any home improvement, business without having obtained a license or registration certificate therefor, in violation of this chapter, or who shall conduct or engage in any home improvement, business while their license is suspended or revoked, upon conviction, shall be punishable by a fine of not less than \$750 and not to exceed \$1,000 for each and every violation.
- B. Each day or part of a day on which a violation continues shall constitute a separate violation.
- C. Anyone convicted pursuant to this section shall be required to pay a mandatory blight mitigation surcharge of \$100. The blight mitigation surcharge shall be paid to the clerk of the court or administrative tribunal that rendered the conviction.

§ 143-14 Cooperative agreements for administration and enforcement. The Town of Southampton may enter into cooperative agreements with incorporated villages located in the Town of Southampton for the performance by the Town of Southampton of the functions, powers and duties relating to administration and enforcement of local laws adopted by such villages requiring a license or registration certificate in order to conduct or engage in home improvement, plumbing or electrical businesses in such villages. Such cooperative agreements may provide, among other things, that the Licensing Review Board shall serve as a licensing officer under such local laws, that the Town Licensing Review Board shall serve as the Licensing Review Board under such local laws, that the Town Board

shall serve as the Board designated to hear appeals and to revoke and suspend licenses and registrations under such local laws, that application fees under such local laws shall be paid to the Town of Southamptton shall serve as the license or registration certificate required under this chapter and under such local laws, so that a license or registration certificate will be permitted to engage in the home improvement, plumbing or electrical business in such villages and in the Town of Southamptton by obtaining one license or registration certificate and paying one application fee.

§ 143-15-Reserved.

§ 143-16 Identification of vehicles.

Vehicles marked with the company name of a licensed home improvement contractor do not need vehicle identification stickers or identification issued by the Town.

Vehicles that have no markings indicating the name of a licensed home improvement contractor must have a home improvement contractor's license number displayed prominently with a copy of a home improvement contractor's license upon the front dashboard of such vehicle.

Failure to display adequate markings indicating a vehicle is being used by a home improvement contractor, as described herein shall be a violation of this section.

All home improvement contractors must provide the Land Management Administrator or designee state license plate numbers for all vehicles used in the course and scope of their home improvement contractor business not registered to that business.

§ 143-17 Application fee

A. A nonrefundable application fee shall be set, and changed as needed, by resolution of the Southamptton Town Board. A copy of the fee schedule is on file with the Town Clerk's office. Licenses and annual renewals of licenses shall be valid for one calendar year.

SECTION 3. Authority.

The proposed law is enacted pursuant to Municipal Home Rule Law §10.

SECTION 4. Severability.

If any section or subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

SECTION 5. Effective Date.

This local law shall take effect upon filing with the Secretary of State pursuant to Municipal Home Rule Law.