

RESOLUTION OF INTRODUCTION

Councilman _____, seconded by Councilman _____, introduced the following proposed local law, to be known as Local Law No. 2 of 2021 of the Town of Washington, New York entitled LITTERING.

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

Section 1. Legislation

The Town Code of the Town of Washington is hereby amended to add a new Section ____ as follows:

Chapter _____

LITTERING

§ ____-1. Title.

This chapter shall be known and may be cited as the "Washington Litter Control Law."

§ ____-2. Definitions and word use.

For the purpose of this chapter, the following words, phrases and terms and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words used in the plural number include the singular; words used in the singular number include the plural; and words in the masculine include the feminine and the neuter. The word "shall" is always mandatory and not merely directory.

BUILDING, MAIN — A building in which is conducted the main or principal use of the lot on which said building is situated.

GARAGE SALE — The sale of tangible personal property from residential premises entitled "garage sale," "yard sale," "tag sale," "porch sale," "lawn sale," "attic sale," "basement sale," "rummage sale," "flea market" or any similar casual or occasional sale advertised to the public at large as such.

GARBAGE — Putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

HANDBILL — Any printed or written matter, any sample or device, circular, leaflet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature.

LESSEE — Any person, corporation, firm, partnership, agency, or association that rents, bails, leases or contracts, for the use of one or more vehicles and has the exclusive use thereof for any period of time.

LESSOR — Any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee or bailee under a rental agreement, lease or otherwise, wherein the lessee or bailee has the exclusive use of the vehicle for any period of time.

LITTER — Garbage, refuse and rubbish, as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger of public health, safety and welfare or tends to create blight.

NEWSPAPER — Any newspaper of general circulation as defined by general law, any newspaper duly entered with the Post Office Department of the United States 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, includes any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

OWNER — Any person, corporation, partnership, firm, agency, association, lessee, or organization which at the time of the notice of violation is issued pursuant to this chapter in which a vehicle is operated:

- A. Is the beneficial or equitable owner of such vehicle; or
- B. Has title to such vehicle; or
- C. Is the registrant or co-registrant of such vehicle which is registered with the Department of Motor Vehicles of this state or any other state, territory, district, province, nation or other jurisdiction; or
- D. Uses such vehicle in its vehicle renting and/or leasing business.

PARK — A park, reservation, playground, beach, recreation center or any other public area in the town, owned or operated by the town and devoted to active or passive recreation.

PERSON — Any person, firm, partnership, association, corporation, company or organization of any kind.

PRIVATE PREMISES — Any house, building or other structure not owned or operated by the town, whether inhabited or temporarily or continuously inhabited or vacant, including any yard, around parking lot, walk, driveway, porch steps, vestibule or mailbox belonging or appurtenant to such house, building or other structure.

PRIVATE RECEPTACLE — A storage and collection container for the storage of litter or rubbish or for the collection of reusable or recyclable household items, such as clothing or shoes, constructed of steel, aluminum or rigid plastic, with or without a heavy duty plastic liner or sack structured and placed so that the exit and entrance of rodents or other animals is prevented; they can be easily cleaned; they will not break or burst when lifted; they are easily unloaded; and they are of sufficient integrity to confine such litter or recyclables between the regular collections thereof. On its own initiative, or at the request of any person, firm or corporation, the Town Board may approve as fit and suitable for such purposes any such container. The term "private receptacle" shall include within its meaning those containers commonly known as "dumpsters" or any other container when used to accumulate or store refuse or trash.

PUBLIC PLACE — Any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, beaches, squares, spaces, grounds and buildings.

RECORDED IMAGES — Images recorded on photographs, microphotographs, videotape, electronic or digital images, or any other medium, showing the front or rear of a vehicle, clearly identifying the registration plate number of the vehicle.

REFUSE — All putrescible and non-putrescible solid wastes, including garbage, rubbish, ashes, street cleanings and solid market and industrial wastes.

RESIDENTIAL PREMISES — A single- or multiple-family dwelling unit used for residential purposes which is not located in an area of town zoned for commercial, industrial, business, manufacturing or mercantile uses.

RUBBISH — Non-putrescible solid wastes consisting of both combustible and non-combustible wastes, such as, but not limited to, paper wrappings, cardboard, tin cans, wood, glass, bedding and crockery.

TOWN — The Town of Washington.

VEHICLE — Every vehicle operated or driven upon a public highway which is propelled by any power other than muscular power.

§ ____-3. Littering in public places prohibited.

- A. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the town except in public receptacles or in authorized private receptacles designated for the deposit of such litter, or in an official town transfer station.
- B. Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements, upon any street, sidewalk or other public place or upon private property.
- C. No person shall sweep into or deposit in any gutter, street or other public place within the town the accumulation of litter from any building or lot or from any public or private sidewalk or driveway.
- D. Persons owning or occupying property shall keep the area or sidewalk in front of their premises free of litter.

§ ____-4. Littering from vehicles prohibited.

No person shall throw or deposit litter from any vehicle upon any street or other public place within the town or upon private property.

§ ____-5. Littering in/on parks, beaches and bodies of water prohibited.

- A. No person shall throw or deposit litter in any park or beach within the town except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or private place. Where public receptacles are not provided, all such litter

shall be carried away from the park or beach by the person responsible for its presence and properly disposed elsewhere, as provided herein.

- B. No person shall throw or deposit litter in any pond, river, stream or body of water within the town.

§ ____-6. Littering on private property prohibited.

- A. No person shall throw or deposit litter on any private property within the town, whether owned by such person or not and whether occupied or vacant, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.
- B. Any owner or person in control of premises upon which litter shall be found shall, upon being ordered to do so by the Building Inspector of the Town of Washington or an Assistant Building Inspector of the Town of Washington, remove the same from the premises within 72 hours of having been so ordered. Any such order which is sent to any person within the State of New York by mail shall be presumed to have been received within two business days from the date of mailing. Any such order which is sent to any person outside of New York State by mail shall be presumed to have been received within four business days from the date of mailing.
- C. Trash pickup.
 - (1) No items or materials which are intended for regular trash, rubbish or refuse pickup, including private receptacles therefor, shall be placed at curbside or on the public way earlier than 5:00 p.m. on the day prior to the time of regularly scheduled pickup, or allowed to remain beyond midnight of the day the pickup actually occurs. Except within the aforementioned specified times, these items or materials, including private receptacles therefor, may not be placed or stored at the curb or in a public space or, in the case of a private premises, in the area between the curb or public space and the nearest wall of main building on said premises, unless within an enclosure and completely concealed from view.
 - (2) The owner, resident or person in control of private property or any portion thereof shall at all times maintain the premises or that portion controlled by him, free of any violation of Subsection C (1).

§ ____-7. Handbills.

- A. In public places. No person shall throw or deposit any handbill in or upon any sidewalk, street or other public place within the town. No person shall hand out or distribute any handbill in any public place except to persons willing to accept it.

- B. On vehicles. No person shall throw or deposit any handbill in or upon any vehicle; except it shall not be unlawful in any public place for a person to hand out or distribute a handbill to any occupant of a vehicle who is willing to accept it.
- C. On private property. No person shall throw or deposit any handbill in or upon any private premises which are:
 - (1) Temporarily or continuously uninhabited or vacant.
 - (2) Posted with a sign placed in a conspicuous position near the entrance thereof, bearing the words "No Peddlers or Agents," "No Advertisements" or words of similar import indicating the desire of the occupants not to have such handbills left upon such premises, or where an occupant expressly directs the person not to throw, deposit or distribute the handbill on the premises.
 - (3) Inhabited, but not posted or subject to an express warning by an occupant, except by handing or transmitting any such handbill directly to an occupant, unless he places or deposits any such handbill so as to secure or prevent it from being blown or drifted about the premises or sidewalks, streets or other public ways.
- D. The provisions of this section shall not apply to the distribution of mail by the United States Postal Service nor to newspapers (as defined herein), except that newspapers shall be placed on private property in such a manner as to prevent them being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

§ ____ -8. Posting notices prohibited.

- A. No person shall post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any lamp post, utility pole or tree or upon any public structure or building, except as may be authorized or required by law.
- B. Exemptions. The prohibitions contained in this section shall not apply to:
 - (1) Notices, posters or other papers or devices calculated to attract the attention of the public to a garage sale. Such notices, posters, or other papers or devices may not be posted more than six days prior to such garage sale and must be removed within three days thereafter.
 - (2) Notices, posters or other papers or devices calculated to attract to attention of the public to a not-for-profit function or event of any charitable, educational, cultural, fraternal, religious corporation, association or institution, civic group, service club, voluntary association or not-for-profit corporation (but not political posters). Such notices, posters or other papers or devices may not be posted more than six days prior to such function or event and must be removed within three days thereafter.

§ ____-9. Penalties for offenses.

- A. Any person committing an offense against any of the provisions of this chapter shall be punished, upon conviction, by a fine not exceeding \$500 a day or by imprisonment not exceeding 15 days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.
- B. It shall be the duty of the duly appointed Building Inspector, Zoning Administrator and/or his agents, as well as law enforcement officers, to enforce the provisions of this chapter.
- C. A person convicted of a violation of this chapter within one year of a prior conviction for an unrelated offense under this chapter shall be punished by a fine not to exceed \$1,000 a day or by imprisonment not to exceed 30 days, or by both such fine and imprisonment.

§ ____-10. Recorded images violations.

- A. Legislative intent. The Town hereby finds and determines that littering within the Town is a threat to the health, well-being and safety of the residents of the Town. As a result, the Town has determined to utilize any permissible technological means available to reduce the incidence of littering. Therefore, the Town has established a policy and procedure set forth in this section to impose liability on the owner of a vehicle in any instance where the image of the operator of such vehicle is captured digitally or otherwise recorded throwing or depositing litter from such vehicle upon any street or other public place within the Town or upon private property.
- B. Owner liability. The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if such vehicle is used or operated with the permission of the owner, express or implied, in any instance where a recorded image is obtained showing the operator throwing or depositing litter from such vehicle upon any street or other public place within the Town or upon private property.
- C. Notice of liability. A notice of liability shall be sent by the Town's Code Enforcement Officer by first-class mail to each person alleged to be liable as an owner of a vehicle in violation of this section. A notice of liability shall contain the name and address of the person to be liable for the violation as the owner; the registration of the vehicle involved in such violation; the location where the violation occurred; the date and time of such violation. Further, the notice of liability shall advise the person charged of the court having jurisdiction to adjudicate the liability of the violation and the time in which he or she may contest the liability alleged in the notice and that a failure to contest the notice in the manner and time prescribed shall be deemed an admission of liability.
- D. Certificate as prima facie evidence. A certificate sworn to or affirmed by the duly

appointed Building Inspector, Zoning Administrator and/or his agents, as well as law enforcement officers primarily responsible for enforcing the provisions of this chapter based upon a review of the recorded images shall be prima facie evidence of the facts contained therein. Any recorded images shall be available for inspection in any proceeding commenced in a court of competent jurisdiction to adjudicate the liability of such violation.

- E. Penalties. An owner shall be required to pay to the Town for a violation of this section a monetary civil penalty not to exceed \$500 for each violation, in addition to any other penalties contained in any other provision law. In the event the Town is required to institute legal proceedings in a court of competent jurisdiction to adjudicate the liability of the violation and to recover such civil penalty, upon such adjudication the Town shall be entitled to recover from the owner any and all associated costs and disbursements incurred by the Town, if any, including attorney's fees and interest upon any unpaid civil penalty calculated at the statutory rate.
- F. Indemnification. If the owner of a vehicle liable for the civil penalty imposed in accordance with this section was not the operator of the vehicle at the time of violation, the owner may maintain an action for indemnification against the operator for any civil penalties paid as well as any costs, disbursements or attorney's fees assessed against the owner.
- G. Defenses.
 - (1) An owner shall have a valid defense to an allegation of liability under this section if the vehicle in question had been reported to a police department or agency as stolen prior to the time the violation occurred and had not been recovered by the time the violation occurred. For the purposes of asserting this defense, it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first-class mail to the court having jurisdiction to adjudicate the liability of the violation.
 - (2) An owner who is a lessor of a vehicle to which a notice of liability is issued shall not be liable for the violation, provided that he or she sends to the court having jurisdiction to adjudicate the liability of the violation a copy of the rental, lease or other such contract covering such vehicle on the day of the violation, with the name and address of the lessee clearly legible, within 30 days after receiving notice of such violation. Failure to send such information within the 30 days shall render the owner liable for the penalty prescribed in this section. When the lessor complies with the provisions of this subsection, the lessee of such vehicle on the date of the violation shall be deemed to be the owner of such vehicle for the purposes of this section.
 - (3) No owner of a vehicle shall be subject to a monetary fine under this section, if the operator of such vehicle was operating the vehicle without the consent of the owner at the time of the violation. However, there shall be a presumption that the operator of such vehicle was operating the vehicle with the consent of the owner at the time the violation occurred.

H. Nothing in this section shall preclude the duly appointed Building Inspector, Zoning Administrator and/or his agents, as well as law enforcement officers from taking other action in connection with violations of any other applicable rules, regulations, statutes or laws.

Section 2. Authority

This local law is enacted by the Town Board of the Town of Washington pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law §10.

Section 3. Effect

This local law shall take effect immediately upon filing with the New York State Secretary of State.

Councilman _____ advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this local law. Councilman _____ offered the following Resolution which was seconded by Councilman _____, who moved its adoption:

WHEREAS, on July 8, 2021, Councilman _____ has introduced this local law for the Town of Washington, to be known as Local Law No. 2 of 2021 of the Town of Washington, New York entitled LITTERING;

RESOLVED, that a public hearing be held in relation to the proposed local as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 10 Reservoir Drive, Millbrook, New York, on August 12, 2021, at 6:00 o'clock, p.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Washington, by the Town Clerk, at least five (5) days before such hearing and that such notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Washington will hold a public hearing at the Town Hall, 10 Reservoir Drive, Millbrook, New York on August 12, 2021 at 6:00 o'clock, p.m., on Local Law No. 2 of the Year 2021, entitled LITTERING.

TAKE FURTHER NOTICE, that all person interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Town Clerk of the Town of Washington, at the Town Hall, 10 Reservoir Drive, Millbrook, New York 12524 between the hours of 9:00 a.m. and 12:30 p.m., and 1:30 p.m. and 3:00 p.m. on all business days between the date of this notice and the date of the public hearing.

DATED: Millbrook, New York
_____, 2021

MARY ALEX, TOWN CLERK

The foregoing Resolution was duly put to a vote which resulted as follows:

Supervisor Ciferri	_____
Councilman Turletes	_____
Councilman Audia	_____
Councilman Murphy	_____
Councilman Rochfort	_____

DATED: Millbrook, New York
July 8, 2021

MARY ALEX, Town Clerk
Town of Washington