

LOCAL LAW INTRO NO. 13060 – 2020

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed “A LOCAL LAW amending Chapter 863 of the Laws of Westchester County in relation to the functions performed by the Director of Consumer Protection” and recommends its adoption.

This legislation updates the leadership structure of the Westchester County Office of Consumer Protection (“Office”). Your Committee is informed that the Office was originally administered by the Sealer of Weights and Measures, and in 1992 the position of Director was created.

Your Committee recognizes that many of the existing consumer laws the Office enforces were passed before there was a Director of Consumer Protection, and therefore do not reference the position. Instead, the laws often refer to the “Westchester County Sealer of Weights and Measures or County Director of Weights and Measures.”

Your Committee notes that the proposed amendments contained in this local law will update the Laws of Westchester County to refer to both the Director and the Sealer, to allow for enforcement of our consumer protection laws by persons holding either position. The changes allow for more flexibility in the leadership of the Office, better reflect how the Office is currently being run and are in the best interests of County government and Westchester’s consumers in the future.

This legislation also includes minor changes which will provide for the appointment of compensated hearing officers and clarify existing consumer protection laws. Your Committee is informed that the Director believes these changes are necessary to aid with the enforcement of these laws.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law is not an action. Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: November 23, 2020
White Plains, New York

Benjamin Boyden
K. Hill

COMMITTEE ON
Legislation

Dated: November 23, 2020
White Plains, New York

The following members attended the meeting remotely, as per Governor Cuomo's Executive Order 202.1 and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below

Nancy E. Pan

Alfred Willis

Vedat Galin

Mary-Jane Skonisky

Colin J. [Signature]

COMMITTEE ON

Legislation

FISCAL IMPACT STATEMENT

SUBJECT: Amend Local Law Ch 683 Cons Prot

NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: n/a

Potential Related Operating Budget Expenses: Annual Amount

Describe: n/a

Potential Related Operating Budget Revenues: Annual Amount

Describe: n/a

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: No fiscal impact

Next Four Years: No fiscal impact

Prepared by: Dianne Vanadia *DV 10/28/20*

Title: Sr. Budget Analyst

Department: Budget

Date: October 28, 2020

Reviewed By: *[Signature]*

Budget Director

Date: 10/29/20

TO: Jonathan Campozano
Assistant County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM
Director of Environmental Planning



DATE: November 25, 2020

SUBJECT: STATE ENVIRONMENTAL QUALITY REVIEW FOR

PROJECT/ACTION: A local law to amend Chapter 863 of the Laws of Westchester County, concerning the functions performed by the Director of Consumer Protection. Since the law does not “change the use, appearance or condition of any natural resource or structure,” or otherwise affect the environment, with respect to the State Environmental Quality Review (SEQR) Act, this does not constitute an action as defined in section 617.2(b) of 6NYCRR Part 617. As such, no environmental review is required.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- DOES NOT MEET THE DEFINITION OF AN “ACTION” AS DEFINED UNDER SECTION 617.2(b)**
- MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION 617.5(c)():**

COMMENTS: None

cc: James Maisano, Director of Consumer Protection
Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Tami Altschiller, Assistant Chief Deputy County Attorney
Norma Drummond, Commissioner of Planning
Claudia Maxwell, Associate Environmental Planner

LOCAL LAW INTRO. NO. 13060-2020

A LOCAL LAW amending Chapter 863 of the Laws of Westchester County in relation to the functions performed by the Director of Consumer Protection.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new section 182.01-a is hereby added to read as follows:

Sec. 182.01-a. – Office of Weights and Measures—Consumer Protection

The consumer affairs provisions contained in the Westchester County Administrative Code and Laws of Westchester County shall be administered by the Office of Weights and Measures—Consumer Protection. Any references in the aforementioned laws to the Department of Weights and Measures, the Office of Weights and Measures, the Department of Weights and Measures—Consumer Protection, the Department of Consumer Protection—Weights and Measures, or other such similar name shall be read to refer to the Office of Weights and Measures—Consumer Protection.

Section 2. Section 182.21 of the Laws of Westchester County is hereby amended to read as follows:

The Director of the Westchester County Office of Weights and Measures-Consumer Protection (“The Director”) and the County Sealer of Weights and Measures or the County Director of Weights and Measures (The “Sealer”) appointed as provided by law, in addition to such other duties and powers granted by law, shall be responsible for Consumer Code enforcement and shall discharge such duties, and exercise any powers granted for that purpose.

Section 3. Subsection “7” of Section 182.31 of the Laws of Westchester County is hereby amended to read as follows:

7. To appoint hearing officers who shall serve with[out] compensation and shall be either attorneys-at law or persons with appropriate experience in consumer affairs.

Section 4. Subsections “1” and “5” of Section 182.41 of the Laws of Westchester County is hereby amended to read as follows:

1. There shall be a Citizen's Consumer Advisory Council consisting of 11 members to be appointed by the County Executive subject to confirmation by the Westchester County Board of Legislators. The Director or Sealer of Weights and Measures may from time to time submit a list of names for appointment to the County Executive. The names submitted by the Director or Sealer shall be for the consideration of the County Executive and shall not bind him to appointment thereof.

5. The Director and Sealer shall be [an] ex officio members of the council, but shall have no vote. The Council shall act by majority vote. A quorum of the council shall be seven voting members. The County Executive shall designate the Chairperson from among the members. The Chairperson shall serve for a term of two years. Three consecutive absences by any member without excuse shall automatically vacate that member's seat.

Section 5. Subsection “5” of Section 182.51 of the Laws of Westchester County is hereby amended to read as follows:

5. To assist, develop and conduct programs of consumer education and information with the approval of the Director or Sealer.

Section 6. Section 182.61 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 182.61. - Powers and duties of the Director and Sealer.

In addition to any powers and duties set forth in the Administrative Code or the Consumer Code, the Director and Sealer shall have the following powers and duties:

1. To authorize the issuance of subpoenas to compel the attendance of witnesses and require the production of books, records, papers, documents, physical exhibits and other evidence which the Director or Sealer deems relevant in connection with an investigation or hearing. Such subpoena shall be issued in the manner and form approved by the County Attorney;
2. In connection with any investigation, to administer oaths and affirmations, take testimony, examine witnesses, receive evidence and preside over or conduct such investigation;
3. In connection with any hearing before a hearing officer, to prosecute any claim of violation of the Consumer Code at such hearing and to request the assistance of the County Attorney pursuant to section 158.11 of this Charter in connection therewith;
4. To act upon consumer complaints presented to him or her pursuant to procedures set forth in Chapter 277, Article VIII, of the Administrative Code or recommended by the board; to issue summonses and participate in hearings before the hearing officer;

5. To make such investigations concerning consumer affairs as the Board may direct or as the Director or Sealer may determine pursuant to Chapter 277, Article VIII, of the Administrative Code, including but not limited to the rights of the Director or Sealer [as the Director of Consumer Affairs], or [his] their duly authorized agents, to enter any retail or commercial establishment for the purpose of making any investigation, examination or inspection that he may deem necessary to carry out the duties of his office, including the enforcement of the provisions of Chapter 863 of the Laws of Westchester County;
6. To request the County Attorney to maintain an action or proceeding in the name of the county in a court of competent jurisdiction to compel compliance with an order of the Director or Sealer or a hearing officer, to enforce a consent decree or agreement pursuant to section 277.201 of Article VIII of the Administrative Code, and/or to restrain by injunction a violation of the Consumer Code. The foregoing relief shall be in addition to but not in limitation of any other provisions provided herein or in the Administrative Code or the Consumer Code for a penalty or any other punishment for such violation;
7. To negotiate, subject to Chapter 277, Article VIII, of the Administrative Code, the settlement of consumer complaints including consent decrees or agreements;
8. To enforce all the provisions of the Consumer Code, without limiting the power granted hereunder or in Chapter 277, Article VIII, of the Administrative Code, the Director or Sealer may request the County

Attorney to file a civil complaint in the name of the county in the court of competent jurisdiction or refer any evidence gathered by the Director or Sealer to the appropriate federal, state or local law enforcement office or agency;

9. To conduct hearings, fix penalties and make other dispositions upon a finding of a Consumer Code violation, or make referrals to other appropriate agencies or officers, as authorized by the Administrative Code;
10. To collect on behalf of the county all penalties imposed by order of the Director or Sealer or a hearing officer upon any person found to have violated any provision of the Consumer Code. The term "person," as used in this chapter, shall include, without limitation any individual firm, association, joint venture, copartnership, group or corporation, or any other legal entity whatsoever;
11. To assist, develop and conduct programs of consumer education and information.

Section 7. Section 277.141 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 277.141. - Consumer Policy Board, consumer affairs, County Director of Consumer Protection, and County Sealer of Weights and Measures.

1. The Director of the Westchester County Office of Weights and Measures-Consumer Protection (The Director) or Sealer of Weights and Measures or the County Director of Weights and Measures (the Sealer) shall, subject to the Consumer Policy Board, be responsible for enforcement of Local Law

No. 7-1975 as from time to time amended (the Consumer Protection Code) or any other local law relating to consumer protection, as provided in the County Charter and shall report to the County Board of Legislators as required by law. The Director or Sealer shall be governed by the applicable provisions of the County Charter and any general, special or local law in the administration of consumer affairs matters, including the Consumer Code. Nothing herein shall limit any power granted to the Director or Sealer pursuant to any state statute;

2. Whenever authority is given to the Director or sealer in this Article VIII, relating to consumer protection, such authority may be exercised by a duly designated deputy in his department, provided that the Consumer Policy Board shall have approved the designation of such deputy to exercise such authority.

Section 8. Section 277.151 of the Laws of Westchester County is hereby amended to read as follows:

1. The Director or Sealer shall have the power at his own initiative or upon direction of the Consumer Policy Board to investigate and issue a summons to any person for violating the Consumer Code or any other local law relating to consumer protection. Such summons in the form of an appearance ticket shall give notice of the alleged violation and shall set forth the time and place of the hearing on such complaints, which shall not be less than eight days following service of the summons. Such hearing shall be held before the Director or Sealer unless the person complained of shall request a hearing

before a hearing officer as provided in subdivision of this section. However, the Director or Sealer shall have the right, in his or her discretion, to proceed directly to a hearing before a hearing officer if notice of the Director's or Sealer's intention to do so is given in the summons.

2. The person complained of shall have the right: (1) to subpoena witnesses to attend at any hearing held pursuant to this section using process issued by the Director or Sealer as provided in section 182.61 of the County Charter; and (2) to request a hearing before a hearing officer. Such hearing officer shall be an attorney or a person with appropriate experience in consumer affairs and appointed by the Director or Sealer from a list of hearing officers previously approved by the board. Such hearing officer shall be compensated at a rate of one hundred twenty-five dollars (\$125.00) per hour, not to exceed seven hundred fifty dollars (\$750.00) per day. Notwithstanding the provisions of this section, a hearing on a complaint alleging a violation of subdivision 1 of section 863.3[13]28 of the Consumer Code shall be held before the Director or Sealer or the designee of the Director or Sealer in accordance with subdivision 3 of section 863.32[7]8 of the Consumer Code.
3. The Director or Sealer may, where no hearing before a hearing officer is requested, conduct a hearing and, in addition to his or her other powers, including but not limited to the right to commence a criminal proceeding pursuant to section 277.181 hereof, either dismiss the complaint as not proven by a preponderance of evidence, seek an adjustment or consent agreement or decree, fix a penalty or provide, among other things, for restitution replacement, repair, cessation of harassment or disapproved

business conduct, upon a finding of a Consumer Code violation; to request the County Attorney to institute appropriate proceedings in a court of competent jurisdiction as provided in Chapters 182 and 277, Article VIII of the Laws of Westchester County; to refer the complaint to a hearing before a hearing officer; or refer the matter to the District Attorney or other proper officer or agency for appropriate action in the Director's or Sealer's discretion.

4. Whenever a hearing is to be held before a hearing officer, such officer shall have the power to dismiss the complaint as not proven by a preponderance of evidence, fix a penalty or provide, among other things, for restitution, replacement repair, cessation of harassment or of disapproved business conduct upon a finding of violation of the Consumer Code.
5. In any hearing conducted hereunder, the Director, Sealer or hearing officer shall, consistent with the requirements of due process, hear testimony and examine such exhibits as may be offered and received in evidence, but shall not be required to follow strict rules of evidence. At the close of the hearing and after full opportunity to be heard has been afforded all parties, the Director, Sealer or hearing officer shall file a decision with the board setting forth findings and conclusions, as well as the reasons or basis thereof, and an appropriate order. In addition to the requirements of this section, all hearings shall be conducted in accordance with such other rules and regulations as may be recommended by the Consumer Policy Board, as provided in section 182.31 of the County Charter. The final order of the Director, sealer or hearing officer may be appealed to a court of competent

jurisdiction by the commencement of a proceeding within 30 days after service of said order upon the aggrieved party.

6. The provisions of this section shall apply to any proceedings to enforce or compel compliance with the various consumer provisions of the Laws of Westchester County heretofore or hereafter enacted.

Section 9. Section 277.161 of the Laws of Westchester County is hereby amended to read as follows:

The Director or Sealer shall have the power to conduct investigations and hold hearings relating to consumer affairs matters. The Consumer Policy Board may direct the Director or Sealer to conduct any such investigation. At the conclusion of each such investigation, the Director or Sealer shall prepare and transmit a written report to the board embodying his or her findings and a recommendation for further appropriate action. The board shall review such recommendation and make a final determination.

Section 10. Subsections “1” and “2” of Section 277.171 of the Laws of Westchester County is hereby amended to read as follows:

1. The hearing officer may impose for each proven violation of the code or for failure to comply with any order made pursuant thereto a civil penalty not to exceed \$1,000.00. Each day that such violation or failure continues shall constitute a separate offense for which a penalty may be assessed. Any person found by the Director or Sealer or the designee of the Director or Sealer to be in violation of subdivision 1 of section 863.313 of the Consumer Code shall be liable for a civil penalty not to exceed \$1,000.00 for the first violation;

not more than \$5,000.00 for the second violation within a five-year period; and not more than \$10,000.00 for the third and all subsequent violations within a ten-year period. Nothing herein contained shall be construed to exempt an offender from any other prosecution or penalty imposed by law. The penalty imposed hereunder and the reasonable costs and expenses attendant to its collection shall be recoverable from the offender in the same civil action brought by the County Attorney in the name of the County of Westchester;

2. The County Attorney in the name of the county may, upon request of the Consumer Policy Board, the Director or the Sealer, in addition to any other action authorized hereunder, maintain an action or proceeding in a court of competent jurisdiction to compel compliance with an order of the Director, Sealer or a hearing officer, to enforce a consent decree or agreement pursuant to section 277.201 of this chapter, or to restrain by injunction a violation of the Consumer Code. The foregoing relief shall be in addition to but not in limitation of any other provision of the Laws of Westchester County authorizing a penalty or other punishment for such violation;

Section 11. Section 277.181 of the Laws of Westchester County is hereby amended to read as follows:

The Director or Sealer may commence a criminal proceeding for a violation of the Consumer Code by filing a criminal complaint in a court of competent jurisdiction. Conviction for violation of any provision of the Consumer Code in the case of a first offense shall constitute a violation punishable by a fine of not less than \$25.00 and not more than

\$1,000.00. Conviction for violation of any provision of the Consumer Code committed by a person (including, without limitation any individual, firm, association, joint venture, partnership, group or corporation or any other legal entity whatsoever) previously convicted of a violation of said code shall constitute a violation punishable by a fine of not less than \$100.00 nor more than \$2,500.00 or by imprisonment for a term not to exceed 15 days, or by both fine and imprisonment.

Section 12. Subsection “1” of Section 277.191 of the Laws of Westchester County is hereby amended to read as follows:

1. All penalties imposed and collected by the Director or Sealer or a hearing officer shall be paid to the County of Westchester and credited to the general fund.

Section 13. Section 277.201 of the Laws of Westchester County is hereby amended to read as follows:

On consent of the Director or Sealer and the person accused of violating the Consumer Code, a consent decree or agreement may be entered into as provided in section 277.151. No such consent decree or agreement shall restrict any legal right or remedy to which any consumer, complaining of the matter which is the subject of such consent decree or agreement, might otherwise be entitled, unless such consumer is party thereto.

Section 14. Section 277.201 of the Laws of Westchester County is hereby amended to read as follows:

Sec. 522.25. - Duty to po[e]st.

1. Any person, firm or corporation within Westchester County engaged in the sale of spray paint, box cutters or laser pointing devices shall conspicuously post at either the point of sale or each point of display, a notice stating as follows: "The sale of spray paint, box cutters and laser pointing devices to persons under the age of 18 years is prohibited pursuant to Chapter 522_of the Laws of Westchester County." The lettering in this notice shall be of 48-point boldface type (upper case letters), except that the same shall be preceded by the caption "Warning" in at least 72-point boldface type (upper case letters). The lettering shall be printed in black ink except for the word "Warning" and the clause "spray paint, box cutters, and laser pointing devices," which shall be printed in red ink. The provisions of this section shall be enforced by the Director or Westchester County Sealer of Weights and Measures and violations of this section shall be punishable by the civil penalty set forth in subdivision 2. herein. The procedures set forth in Article VIII of Chapter 277 of the Laws of Westchester County shall be followed to impose a civil penalty for a violation of this section.
2. A violation of this section shall be punishable by a civil penalty not less than \$150.00 and not exceeding \$500.00.

Section 15. Section 692.05 of the Laws of Westchester County is hereby amended to read as follows:

This chapter shall be enforced by the Director or Westchester County Sealer of Weights and Measures. Violations shall be punishable by the civil penalty set forth in section 692.06 of this chapter. The procedures set forth in Article VIII of Chapter 277 of the Laws

of Westchester County shall be followed to impose a civil penalty for a violation of this chapter.

Section 16. Section 863.01 of the Laws of Westchester County is hereby amended to read as follows:

This Code shall be known as the “County of Westchester Consumer Protection Code[.]” and is also referred to in the laws of Westchester County as “Consumer Protection Code” or “Consumer Code.”

Section 17. Section 863.11 of the Laws of Westchester County is hereby amended to read as follows:

10. Director. The Westchester County Director of the Office of Weights and Measures- Consumer Protection.

11. Computer-assisted checkout system means any electronic device, computer system or machine which determines the selling price of a stock-keeping item by interpreting its universal product code, or by use of its price look-up function.

[11.] 12. Department means the Westchester County Department of Weights and Measures- Consumer Protection.

[12.] 13. Retail store means a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to article twenty-eight of the tax law.

[13.] 14. *Shelf price* means the tag or sign placed by an authorized person at each point of display of a stock keeping unit, which clearly sets forth the true and actual price of the stock keeping item.

[14.] 15. *Retail area* means the area designated in a retail store to display and sell products, provide customer service and checkout. The retail area does not include the storage area, back rooms, stock area, maintenance areas or other locations which are not intended to be accessible to consumers.

Section 18. Section 863.53 of the Laws of Westchester County is hereby amended to read as follows:

This Code shall be enforced by the Director or sealer, who shall have all such powers as are conferred upon the sealer in the various provisions of the Laws of Westchester County, as they now exist or may hereafter be amended. Nothing in this section shall be construed or applied to limit the exercise of any other enforcement powers granted to sealers or Municipal Directors of Weights and Measures in Article 16 of the New York State Agriculture and Markets Law or any other statute or law now existing or that may hereafter be enacted.

Section 19. Section 863.71 of the Laws of Westchester County is hereby amended to add a new subsection “e” to read as follows:

e. To add an additional fee to any transaction for consumer goods or services, beyond sales tax, and fail to provide adequate and reasonable notice of said fee during the transaction, including but not limited to the point of sale, price displays, signage and menus,

and further, only adding said fee to bill or receipt at end of the transaction shall not be deemed adequate notice.

Section 20. Subsection “8” of Section 863.72 of the Laws of Westchester County is hereby amended to read as follows:

8. The Director or sealer may revoke a waiver from item pricing for any of the following reasons:
 - a. Failure to comply with any provisions of this Chapter;
 - b. Deliberate overcharging of any consumer; or
 - c. Material misrepresentation in the application for a waiver.

Section 21. Section 863.244 of the Laws of Westchester County is hereby amended to read as follows:

1. An application for a license to be a secondhand dealer shall be made by the owner, or operator if different from the owner, on forms provided by and filed with the office of [the] sealer (hereinafter referred to in this Article as the "office"). The application shall contain the following information:
 - a. Name and description of the applicant's business enterprise. Individuals operating under a trade name shall present a certified copy of the trade name certificate filed with the New York State Department of State. A partnership conducting business, whether or not under a trade name, shall submit a certified copy of the partnership certificate which was filed in the New York State Department of State's office when the partnership was formed. A

corporation shall furnish a copy of its certificate of incorporation, as well as its certificate of good standing and, if a foreign corporation, its application for authority to do business in New York State;

- b. The applicant's legal address and address of all places of business within Westchester County and the name and address of a designated agent for service of process;
 - c. A description of the nature of the business to be conducted and/or being conducted by the applicant in Westchester County;
 - d. The name and address of the owner or owners of the business premises and the nature of the right of occupancy of the applicant to the use of said premises;
 - e. A statement that the applicant is at least 18 years of age; and
 - f. A statement as to whether or not the applicant has, within the past ten years, been convicted of a crime, the nature of the offense and the punishment or penalty assessed therefore and such other facts or evidence as is deemed necessary to establish that the applicant is a person fit and capable of properly conducting the activity or business for which the license is sought.
2. Such application for a license shall be accompanied by a non-refundable application fee of \$250.00. If a license hereunder shall be lost, stolen, or destroyed; a duplicate may be issued by the office upon; (a) the filing of an affidavit satisfactorily explaining the facts of such loss or theft; and (b) the payment of a \$50.00 fee for each duplicate copy.

3. The process to obtain a duplicate license for an additional establishment owned or operated by the applicant shall be the same as described in subsections 1. and 2. of this section.
4. Licenses shall expire annually after the date of issuance. Every license may be renewed upon payment of the required renewal fee in the amount of \$200.00, and filing a renewal application with the office no earlier than 60 days, and no later than 15 days before the license is due to expire.

Section 22. Subsection "5" of Section 863.91 of the Laws of Westchester County is hereby amended to read as follows:

5. When food or food products are packaged or wrapped for sale by the retailer in advance of being sold, offered for sale or exposed for sale, or whenever meat, poultry or fish in containers are sold, offered for sale or exposed for sale, to fail to provide and maintain an accurate computing scale of adequate capacity for use by the consumer. This computing scale shall be sealed by the Director or the Westchester County sealer of Weights-Measures according to the provisions of the Agriculture and Markets Law of the State of New York, and shall not be placed or set more than 30 feet from the prepackage display counter so as to be easily available to consumers. A prominent and conspicuous sign, clear of all obstructions, shall be displayed as close as practicable, and closer than any other sign, to the location of said scale, such sign to read "For Customer Use";

Section 23. Section 863.263 of the Laws of Westchester County is hereby amended to read as follows:

No person shall sell, offer or keep for sale at a motor fuel dispensing facility, motor fuel from a motor fuel device which draws from a storage tank containing an accumulation of more than one [two] inch[es] of water at any point along the bottom of the tank.

Section 24. Subsection “2” of Section 863.313 of the Laws of Westchester County is hereby amended to read as follows:

2. Upon issuance of a home improvement license under the provisions of this chapter, the Director or sealer shall issue a vehicle decal for each vehicle identified by the licensee as a vehicle which will be used in connection with the licensed activities. Such vehicle decals shall be conspicuously displayed in or on the vehicle(s) used in connection with the licensed activities during the term of the license.

Section 25. Subsection “1” of Section 863.314 of the Laws of Westchester County is hereby amended to read as follows:

1. An application for a license under this Article, or a renewal thereof, shall be made in writing to Director or sealer in accordance with such procedures, providing such information and on such forms as the Director or sealer may from time to time require. An application shall require any information the Director or sealer deems necessary to render a determination in accordance with this chapter and shall, at a minimum, require the disclosure of any final and non-appealable civil, criminal, or administrative business related

judgments or determinations of liability incurred by the applicant, or by any business for which applicant was an owner, director, officer, member, or otherwise exercised control over the business, including but not limited to judgments or determinations of liability related to the nonpayment or underpayment of wages. The application shall be signed by the applicant and shall be accompanied by a check, cash or money order in the amount of the fee required under section 863.315 of this Article.

Section 26. Section 863.315 of the Laws of Westchester County is hereby amended to read as follows:

Effective January 1, 2019:

The non-refundable biannual fee for a license to conduct a home improvement business shall be \$400.00, and for each renewal thereof the fee shall be \$400.00. The license to conduct a home improvement business shall be for a period of two years and each renewal thereof shall be for two years. The Director or sealer may impose a penalty of \$25.00 upon a renewal application received by the Director or sealer later than 15 days prior to the expiration date of the license sought to be renewed. The fee for issuing a duplicate license for one lost, destroyed or mutilated shall be \$25.00.

Effective January 1, 2021:

The non-refundable biannual fee for a license to conduct a home improvement business shall be \$500.00, and for each renewal thereof the fee shall be \$500.00. The license to conduct a home improvement business shall be for a period of two years and each renewal thereof shall be for two years. The Director or sealer may impose a penalty of \$25.00 upon a renewal application received by the Director or sealer later than 15 days prior to the

expiration date of the license sought to be renewed. The fee for issuing a duplicate license for one lost, destroyed or mutilated shall be \$25.00.

Section 27. Section 863.316 of the Laws of Westchester County is hereby amended to read as follows:

1. Within 90 days after receipt of a complete application in proper form, the Director or sealer shall grant or deny a license, or renewal thereof, under this Article. The Director or sealer shall grant the license or renewal unless the Director or sealer determines that applicant:
 - a. Is not financially responsible. In making such a determination the Director or sealer shall take into consideration all final non-appealable determinations of liability in any civil, criminal or administrative actions including, but not limited to, those involving nonpayment or underpayment of wages rendered by any local, state, or federal government court, agency, or division, including any such determinations rendered against any business for which the applicant was an owner, director, officer, member, or otherwise exercised control over the business;
 - b. Is unqualified to engage in the home improvement business;
 - c. Has made a false statement of a material fact in the application for a license under this Article;
 - d. Has outstanding against it unsatisfied home improvement business-related judgments. In making such a determination the Director or sealer shall take into consideration all final non-appealable

determinations of liability in any civil, criminal or administrative actions including, but not limited to, those involving nonpayment or underpayment of wages rendered by any local, state, or federal government court, agency, or division, including any such determinations rendered against any business for which the applicant was an owner, director, officer, member, or otherwise exercised control over the business;

- c. Has against it an unacceptable amount of home improvement complaints as determined by the Director or sealer.

A denial of a license or renewal shall be made by the Director or sealer in writing and shall set forth a statement of the reason or reasons therefor and shall be subject to administrative and judicial review in accordance with subsection 2. of this section.

- 2. Within 30 days after a denial of an application for a license or a renewal thereof, the applicant shall be entitled to demand a hearing before the Director or sealer by making a written demand therefor. Following receipt of such written demand, a hearing shall be held by the Director or sealer, or by a deputy designated by the Director or sealer, or by such other person or persons designated by the Director or sealer. A record of such hearing shall be made. At such hearing the applicant may be represented by counsel and may offer evidence in his or her behalf to demonstrate that a license or renewal should be granted. Compliance with technical rules of evidence shall not be required. If a deputy or other person or persons is designated to hold the hearing, such deputy or other designated person or persons shall refer the record and recommendations to the Director or sealer for determination.

The determination made by the Director or sealer shall be subject to judicial review in accordance with Article 78 of the Civil Practice Law and Rules in a proceeding brought within four months after the determination is rendered.

Section 28. Section 863.317 of the Laws of Westchester County is hereby amended to read as follows:

1. In accordance with the procedure set forth in subsection 2. of this section, the Director or sealer may revoke, or upon such conditions as the Director or sealer deems appropriate, suspend for a period of time, a license issued under this Article; provided, however, that no revocation or suspension imposed hereunder shall be construed to impair or preclude a licensee's obligation to complete home improvement contracts in existence on the date such revocation or suspension otherwise becomes effective. On the effective date of such revocation or suspension the licensee shall furnish the Director or sealer with a written list of such home improvement contracts with respect , to which licensee is under a legal obligation to perform, in accordance with procedures authorized by subsection 5. of section 863.324 of this Article.
2. Grounds for suspension or revocation shall include:
 - a. Grounds to deny a license or renewal under section 863.316;
 - b. Failure by the licensee to fully and satisfactorily perform or furnish any labor, services or materials included under a home improvement contract;
 - c. The commission by a licensee of an act or acts in violation of section 863.319 of this Article.

3. The licensee shall be given written notice by the Director or sealer of the commencement of the revocation or suspension proceeding and a copy of the charges upon which the proceeding is brought. Service may be made by ordinary mail to the address given in the application made by the licensee for a license under this Article. The licensee shall answer the charges in writing within ten days. A hearing on such charges shall be held by the Director or sealer or a deputy designated by the Director or sealer, or by such other person or persons designated by the Director or sealer. A record of such hearing shall be made. At such hearing the licensee may be represented by counsel and may offer evidence in his or her behalf. Compliance with technical rules of evidence shall not be required. The burden of providing the charges by substantial evidence shall be upon the Director or sealer. If a deputy or other person or persons is designated to hold the hearing, such deputy or other designated person or persons shall refer the record and recommendations to the Director or sealer for determination. The determination made by the Director or sealer shall be subject to judicial review in accordance with Article 78 of the Civil Practice Law and Rules in a proceeding brought within four months after the determination is rendered.

Section 29. Section 863.318 of the Laws of Westchester County is hereby amended to read as follows:

Any license issued by the Director or sealer under this Article shall not be assigned or transferred by the licensee.

Section 30. Subsection “1” of Section 863.319 of the Laws of Westchester County is hereby amended to read as follows:

1. It shall be a violation to:
 - a. Abandon or fail to perform, or furnish, without justification, any labor, services or materials included under a home improvement contract, or willfully deviate from the plans or specifications of a home improvement contract in any material respect without the consent of the owner;
 - b. Conduct a home improvement business in any name other than the one in which the person is licensed;
 - c. Fail to agree in writing that the owner may cancel by written notice the home improvement contract without penalty at any time prior to midnight on the third business day after the date such contract is made;
 - d. Make a false statement or provide false information in making application for a license, including a renewal or duplicate license;
 - e. Fail to notify the Director or scaler, in writing, of any change of control in the ownership, management or business name or location of a home improvement business within ten days thereof;
 - f. Fail to disclose on all advertising, stationery, proposals, change orders, and invoices for a home improvement business and in all contracts with an owner for a home improvement, the number of the license issued under this Article;
 - g. Fail to comply with the provisions of section 863.325 of this Article;

- h. Fail to comply with the provisions of sections 863.326, 863.327 and 863.329 of this Article; or
- i. Operate a home improvement business without a license as required by this Article.
- j. Fail to provide direct supervision over subcontractors or employees hired by licensee at job site.

Section 31. Subsections “5” and “6” of Section 863.324 of the Laws of Westchester County is hereby amended to read as follows:

- 5. The Director or sealer is empowered to establish administrative procedures to carry out the provisions of this Article in conformity with the provisions thereof. The Director or sealer shall require proof of liability and property damage insurance in an amount to be set by the Director or sealer.
- 6. The Director or sealer may require an application for a license to be accompanied by a bond, approved as to form by the County Attorney, executed by a bonding or surety company authorized to do business in the State of New York or cash security in an amount to be set by the Director or sealer not to exceed \$50,000.00, conditioned upon the assurance that during the term of such license, the contractor will continue to comply with the provisions of this Article, to assure that, upon default in the performance of any contract, the advance payments made thereon, less the reasonable value of services actually rendered to the date of the contract in the event of noncompletion thereof, will be refunded to the consumer, owner or lessee with whom such contract was made. Such bond shall run to the County of

Westchester for the use and benefit of any person or persons intended to be protected thereby. The required bond, after the aforementioned approval by the County Attorney, shall be filed in the office of the Director or sealer. The Director or sealer may require a bond at any time during the term of the license based on the licensee's performance during such term.

Section 32. Section 863.325 of the Laws of Westchester County is hereby amended to read as follows:

1. If a licensee or an affiliate directly or indirectly arranges or facilitates the financing of a home improvement contract, then, prior to executing the home improvement contract, said licensee must:
 - a. Disclose to the owner, in writing, any payments made or received by the licensee in connection with the financing, including the amount of such payments, on forms provided by the Director or sealer;
 - b. Provide an appropriate Consumers' Bill of Rights, prepared by the Director or sealer; and
 - c. Obtain the owner's written acknowledgement of receipt of the written disclosure of any payments and the appropriate Consumers' Bill of Rights on forms provided by the Director or sealer.
2. Within five (5) business days of executing a home improvement contract, any licensee required to comply with the provisions of subdivision 1, must also file with the Director or sealer:
 - a. A copy of the home improvement contract;

b. A copy of the owner's Acknowledgement of Receipt of the written disclosure and the appropriate Consumers' Bill of Rights.

3. In addition to the penalties set forth in sections 277.171, 277.181 and 863.52, the Director or sealer may, after providing notice and an opportunity to be heard, revoke the license or deny the application for license renewal of any licensee that fails to comply with any of the requirements of this section.

Section 33. Subsection “2” of Section 863.327 of the Laws of Westchester County is hereby amended to read as follows:

2. Ninety days from the effective date of this local law, and to the extent practicable, the Director or sealer shall notify all licensees and applicants and provide:

- (a) A copy of this local law regarding the operation of leaf blowers by a contractor or licensee under this section; and
- (b) A copy of EPA Phase 2, 2007 exhaust emission standards.

Section 34. Section 863.328 of the Laws of Westchester County is hereby amended to read as follows:

1. Any police officer or authorized officer, employee or agent of the Department of Consumer Protection — Weights and Measures, upon service on the operator of a vehicle and/or person in possession of tools or implements of a notice of violation for operating without a license required by subdivision 1 of section 863.313 of this Article, may seize and impound any vehicle, tool or other implement which such officer has reasonable cause

to believe is being used in connection with such violation. Any vehicle, tool or implement seized pursuant to this section shall be delivered into the custody of the Department of Public Safety or Department of Consumer Protection — Weights and Measures.

2. A person from whom a vehicle, tool or implement has been seized and impounded pursuant to this section shall receive notice at the time of such seizure and by overnight mail, as soon thereafter as practical informing such person how and when the vehicle, tool or imple[me]ment may be reclaimed. In the event that the person from whom the vehicle was seized is not the registered owner of the vehicle, separate notice shall be provided by overnight mail to the registered owner of the vehicle. Notice shall also be provided to any lienholder in the same manner. For purposes of this section, the term "lienholder" shall, in the case of a vehicle, mean any person, corporation, partnership, firm, agency, association or other entity who at the time of a seizure pursuant to this section has a financial interest recorded as a lien with the Department of Motor Vehicles of the State of New York or any other state, territory, district, province, nation or other jurisdiction.
3. The Director or sealer or the designee of the Director or sealer shall hold a hearing in accordance with the provisions of section 277.151 of the Laws of Westchester County not otherwise in conflict with this section, to adjudicate the violation of subdivision 1 of section 863.313 of this Article underlying the seizure and impoundment within five business days after the date of such seizure and impoundment and shall render his or her determination immediately following the conclusion of such hearing. Such determination

shall also include a finding as to whether or not such vehicle, tool or other implement was used in connection with such violation, and if necessary, an additional finding as to whether the owner of such property, if not the person served with a notice of violation pursuant to subdivision 1 of this section, permitted the use of such property under circumstances evincing that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property. There shall be a rebuttable presumption that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property, if such owner was the employer, parent, legal guardian or spouse of the person served with a notice of violation pursuant to subdivision 1 of this section at the time of the seizure.

4. A vehicle, tool or other implement seized and impounded pursuant to this section may be released to the owner of such property prior to the hearing provided in subdivision 3 of this section upon the posting of an all cash bond in a form satisfactory to the Director or sealer in an amount sufficient to cover: (a) the maximum civil penalties which may be imposed for the violation of subdivision 1 of section 863.313 of this Article underlying the seizure and impoundment; (b) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against the person served with a notice of violation pursuant to subdivision 1 of this section — if the authorized agent seizing such property pursuant to subdivision 1 of this section alleges, based upon reasonable cause to believe, that such owner, if not the person served with a notice of violation pursuant

to subdivision 1 of this section, permitted the use of such property under circumstances evincing that such owner knew or should have known that such property would be used for the alleged conduct that was the basis for the seizure of the property; and (c) all reasonable costs for removal and storage of such vehicle, tool or implement. In addition, release of such vehicle, tool or other implement to the owner of such property shall also require payment of all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County directly against such owner. Release to a person claiming such property shall be conditioned on presentation of, in the case of (i) a vehicle, proof of ownership or authorization from the owner of the vehicle as ownership is defined by section 388 of the Vehicle and Traffic Law, or (ii) in the case of a tool or other implement or equipment, proof of ownership or authorization by the owner satisfactory to the Director or sealer.

5. Following an adjudication that has resulted in a determination that the vehicle, tool or other implement was used in connection with unlicensed activity in violation of subdivision 1 of section 863.313 of this Article, release of such vehicle, tool or other implement to the owner of such property may be obtained upon payment of: (a) all civil penalties for the violation of subdivision 1 of section 863.313 of this Article underlying the seizure and impoundment; (b) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County directly against such owner; (c) all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against the person

served with a notice of violation pursuant to subdivision 1 of this section — if such owner was determined by the Director or sealer or the designee of Director or the sealer pursuant to subdivision 3 of this section, to have permitted the use of such property by the person served with a notice of violation pursuant to subdivision 1 of this section under circumstances evincing that such owner knew or should have known that such property would be used for the conduct that was the basis for the seizure of the property; and (d) all reasonable costs for removal and storage of such vehicle, tool or implement and proof of ownership as provided in subdivision 4 of this section.

6. No person shall obtain release of a vehicle, tool or other implement pursuant to subdivisions 4 and 5 of this section, unless and until such person submits an application for a home improvement license, or reinstatement of such a license, as appropriate, to the Director or sealer in the form and containing the information required by the Director or sealer. Notwithstanding the provisions of this section, in the event that the owner of the vehicle, tool or other implement was not the person who was served with a notice of violation alleging a violation of the provisions of subdivision 1 of section 863.313 of this Article or found to be in violation of the provisions of subdivision 1 of section 863.313 of this Article, such owner may obtain release upon payment of all applicable civil penalties and all reasonable costs of removal and storage as provided herein and upon execution of a sworn statement, subject to the provisions of the Penal Law relative to false statements and satisfactory to the Director or sealer, that he or she will not

permit the person who is alleged to have violated or found to have violated such provisions to operate or possess the vehicle, tool or other implement in violation of subdivision 1 of section 863.313 of this Article.

7. After adjudication of the violation underlying the seizure in accordance with subdivision 3 of this section, if the Director or sealer or the designee of the Director or sealer finds that the vehicle, tool or other implement has not been used in connection with unlicensed activity under the provisions of subdivision 1 of section 863.313 of this Article, the Department of Consumer Protection — Weights and Measures shall promptly cause such vehicle, tool or other implement to be released to its lawful owner upon payment of all outstanding civil penalties previously imposed pursuant to Section 277.171 of the Laws of Westchester County against such owner. If applicable, the Department of Consumer Protection — Weights and Measures shall also promptly return any cash bond posted pursuant to subdivision 4 of this section in accordance with the determination of the Director or sealer or the designee of the Director or sealer pursuant to subdivision 3 of this section. Upon demand of the applicant, the Department of Consumer Protection — Weights and Measures shall refund fees, as appropriate, paid in connection with the submission of an application for a home improvement license pursuant to subdivision 6 of this section, provided that said applicant withdraws the application, if pending, or otherwise surrenders any home improvement license previously issued pursuant to such application.

Section 35. Section 863.330 of the Laws of Westchester County is hereby amended to read as follows:

The Director or sealer shall accept complaints from any person, relating to a contractor or home improvement business. In considering an application for a license or renewal under this chapter, conducting any investigation, or determining whether to revoke a license granted under this chapter, the Director or sealer may consider any complaints received.

Section 36. Subsection “4” of Section 863.505 of the Laws of Westchester County is hereby amended to read as follows:

- (4) A proceeding to recover any civil penalty authorized to be imposed pursuant to this Article shall be commenced by the service of a notice of violation which shall be returnable to the Director or sealer. The Director or sealer, after due notice and an opportunity for a hearing, in accordance with the provisions of this chapter, shall be authorized to impose the civil penalties prescribed by this section.

Section 37. Section 863.1305 of the Laws of Westchester County is hereby amended to read as follows:

Every person who offers to provide or provides lawn or turf services, including, but not limited to, persons applying for a license to engage in a home improvement business pursuant to Article XVI of this Chapter, or applying for renewal of a license to engage in a home improvement business pursuant to such article, and who offer to provide or provide lawn or turf services in the operation of such home improvement business, shall provide

proof of completion of a turf management course approved by the Director or sealer in consultation with the Commissioner of the Department of Planning and Westchester County Cornell Cooperative Extension. The Director or sealer, in consultation with the Commissioner of the Department of Planning and Westchester County Cornell Cooperative Extension, may require the participation of such persons at additional informational seminars and/or courses at reasonable times but no more than once per year in order to ensure that all such persons are informed of developing issues, technologies, and laws which may impact the performance of services by such persons in Westchester County. The Director or sealer, in consultation with the Commissioner of the Department of Planning, shall have authority to adopt rules and regulations as may be deemed necessary for the administration and enforcement of this paragraph.

Section 38. This Local Law shall take effect immediately.

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss.

I HEREBY CERTIFY that I have compared the foregoing Local Law, Local Law Intro No. 13060 - 2020, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Local Law, which was duly adopted by the County Board of Legislators, of the County of Westchester on December 8, 2020, and approved by the County Executive on December 10, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 11th day of December, 2020.



Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

