

County of Putnam
Local Law #9 of 2011
(Passed at the Regular Full Meeting April 5, 2011)

APPROVAL/LOCAL LAW TO AMEND CHAPTER 135 OF THE CODE OF THE PUTNAM COUNTY ENTITLED "CONTRACTORS".

Be it enacted by the Legislature of the County of Putnam as follows:

Section 1.

Chapter 135 of the Code of Putnam County is hereby amended to read as follows:

§135-1. Legislative purpose.

It is the purpose of the Legislature of Putnam County in enacting this chapter to safeguard and protect the homeowner against abuses on the part of home improvement contractors by regulating the home improvement, remodeling and repair businesses and by requiring the registration of such persons engaged in such business. The County Legislature recognizes the tradition of friend, neighbor and/or relative assisting a homeowner in self-initiated home improvement projects and does not intend to impair this tradition. Therefore, these traditions shall be taken into account by the County Code Enforcement Officer and the Home Improvement Board of Putnam County while using their discretionary powers in assessing and enforcing Chapter 135 of the Home Improvement Contractors Law. Such registration of those engaged in business will protect and promote the health, safety and welfare of the residents of the County of Putnam, pursuant to §10, Subdivision (12), of the Municipal Home Rule Law.

§135-2. Definitions.

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

BOARD – The Home Improvement Board of Putnam County, as provided herein.

CUSTOM HOME – A new single-family residence to be constructed on a parcel of land designated by a tax map number and owned by the purchaser at the time of contract, provided that such residence is intended for residential occupancy by such purchaser.

DIRECTOR – The Director of Consumer Affairs, Weights and Measures.

HOME IMPROVEMENT

A. The repair, replacement, remodeling, refinishing, installation, construction, alteration, conversion, modernization, beautification, improvement or addition to a parcel of land designated by a tax map number or a building or that portion thereof which is used or designed to be used as a private residence apartment or dwelling place, including, but not limited to: [Amended 12-4-2007 by L.L. No. 18-2007]

- (1) Asphalt or blacktop or driveway sealing.
- (2) Landscaping and gardening.
- (3) Arboriculture.

- (4) Lawn mowing/ground maintenance/leaf blowing/or any similar outdoor vocation. (Note: shall not apply to full-time students under the age of 22 engaged in seasonal or part-time employment and who do not have employees).
 - (5) Swimming pools.
 - (6) Porches, patios, terraces, decks and any other outdoor stonework.
 - (7) Garages and garage doors.
 - (8) Central vacuum cleaning systems.
 - (9) Storm windows.
 - (10) Septic systems.
 - (11) Insulation.
 - (12) Waterproofing.
 - (13) Tiling.
 - (14) Fencing.
 - (15) Painting and wall coverings.
 - (16) Flooring and wall-to-wall carpeting.
 - (17) Masonry.
 - (18) Roofing.
 - (19) Awnings or siding.
 - (20) Antennas or satellite dishes.
 - (21) Carpentry.
 - (22) Excavation.
 - (23) Environmental reclamation.
 - (24) Other interior or exterior improvements.
- B. "Home improvement" shall also mean the construction of a custom home, the installation of home improvement goods or the furnishing of home improvement services.
- C. Notwithstanding the foregoing, "home improvement" shall not include:
- (1) The sale or construction of a new home, other than a custom home as defined in this section.
 - (2) The sale of goods or materials by a seller 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) Work performed upon a residence by the owner, or upon a building owned by or controlled by any federal, state or local government, including school districts.
 - (4) The sale or installation of appliances, such as stoves, refrigerators, freezers, room air conditioners, dishwashers, clothes washers or dryers, which are designed to be removable from the premises without material alteration thereof
 - (5) The sale or installation of decorative goods or services, such as draperies and carpets.
 - (6) The performance of repairs, replacements, or other services pursuant to an express or implied warranty, or a maintenance agreement as defined in § 395-a of the New York State General Business Law.

HOME IMPROVEMENT BUSINESS -- The business of providing a home improvement to an owner for a profit, fee, remuneration, favor or as part of a barter agreement.

HOME IMPROVEMENT CONTRACT -- An agreement in writing or contained in one or more documents, which is signed by the parties, for the performance of a home improvement between a home improvement contractor and an owner.

HOME IMPROVEMENT CONTRACTOR -- Any person, firm or corporation who owns, operates, maintains, controls, transacts or conducts a home improvement business or who undertakes or advertises a home improvement service, or offers to undertake or agrees to perform any home improvement for the owner for a fee, remuneration, favor or as part of a barter agreement, other than a bona fide employee of the registrant. "Home improvement contractor" does not include a person, firm, corporation, landlord, cooperative corporation, condominium board of managers, joint tenant or co-tenant that owns, in whole or in part, the property to be improved.

LEGISLATURE -- The Putnam County Legislature.

OWNER -- Any homeowner, tenant, or any other person who orders, contracts for or purchases a home improvement or the service of a contractor, or the person entitled to the performance of the work of a contractor pursuant to a home improvement contract.

PERSON -- An individual, firm, partnership, association, corporation, trust, owner, contractor, salesman or other legal entity.

REGISTRANT -- A person registered to engage in the home improvement business under the provisions of this chapter.

SUBCONTRACTOR -- A person, other than a supplier of materials or laborer, who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or a subcontractor's contract, as the case may be, and who does not perform work other than as a subcontractor.

§ 135-3. Registration required; home improvement business.

A. Registration required. No person shall maintain, conduct, operate or engage in a home improvement business within the County of Putnam, or hold himself or herself out as being able to do so, unless such person is registered pursuant to this chapter.

B. Exceptions.

(1) No registration shall be required of any person who performs labor or services for a contractor or subcontractor duly registered hereunder for wages or salary.

(2) A license issued by the Putnam County Plumbing Board or the Putnam County Board of Examiners for Electrical Contractors shall be deemed a registration in compliance with this section for the benefit of the holder thereof to perform work within the scope of his or her profession.

C. Rules governing registration application.

(1) An application for an original or renewal registration required by this subsection shall be in writing upon a form prescribed by the Director. The Director may seek from an applicant sufficient relevant information about the applicant's character, experience, financial stability and other relevant information necessary to evaluate the applicant's qualification

to be registered.

- (2) Each application shall be accompanied by a surety license and permit bond in the amount of \$25,000 with a minimum policy term of two years, conditioned upon the assurance that during the term of the registration, the registrant will continue to comply with the provisions of this title 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 such default, of the reasonable costs of completion of the contract in the event of noncompletion thereof, will be refunded to the purchaser, owner or lessee with whom such contract was made. In addition, the bond shall inure to the benefit of any owner with whom the registrant shall enter into any home improvement contract or provide any home improvement during the period of registration.
- (3) Each applicant shall be required to provide a valid certificate of liability insurance naming Putnam County Department of Consumer Affairs as a certificate holder and additional insured.
- (4) Each applicant shall provide proof that worker's compensation insurance is in full force and effect for all workers within the applicant's employ, including subcontractor personnel, along with the application.
- (5) Each applicant shall provide the Director with a copy of his or her photo identification as a precondition to the issuance of a registration.
- (6) Effective May 9, 2011, each applicant for an original or renewal registration when applicable shall provide the Director with proof of completion of a best management practices course for lawn and garden care as required per § 135-4 of this chapter.

D. Content of registration application.

- (1) An application for an original or renewal registration required by this section shall be in writing upon a form prescribed by the Director.
- (2) In addition to that information sought on an application for registration, the Director, or his or her duly authorized designee, may seek from an applicant such sufficient and relevant information about the applicant's character, experience, financial stability and other relevant information necessary to evaluate the applicant's qualifications to be registered.
- (3) All applications for an original or renewal registration certificate shall include a representation by the applicant, in a form as determined by the Putnam County Legislature, that he or she will (a) use the E-Verify Internet-based system, operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), to verify the employment authorization of his or her newly hired employees, and (b) maintain records documenting his or her use of E-Verify during the term of his or her registration certificate. If such representations are not made, such registration certificate will not be issued. All applications shall also be accompanied by documentation issued by the U.S. Department of Homeland Security indicating that the applicant has registered as an E-Verify user. An applicant's failure to comply with the provisions as described herein shall constitute grounds for the imposition of a fine and/or the suspension or revocation of a registration certificate and/or the denial of an application for the renewal of a registration certificate, in accordance with the applicable

provisions of this chapter. This subsection shall not apply to applicants who have no employees or applicants who reasonably anticipate that no employees will be hired during the term of such registration certificate. [Added 4-7-2009 by L.L. No. 72009]

E. Proper display of registration.

- (1) Each and every registration certificate issued pursuant to this chapter shall be posted in a conspicuous location at the registrant's place of business, and a wallet identification card, which shall contain a photograph of the holder thereof and which shall be issued by the Director, shall be carried with each contractor or employee and displayed upon request. The registration number shall be included on all documents distributed by the registrant, including all advertisements.
- (2) Each registrant shall be required to affix to a location to be determined by the Director on all vehicles owned/leased or used in the performance of the occupation so registered, a valid sticker in a form to be determined by the Director.
 - (a) Said bumper sticker shall be provided by the Putnam County Department of Consumer Affairs.
 - (b) Each registrant shall be issued one bumper sticker at no cost at the time of registration. Any additional stickers shall be provided to registrant at a cost to be determined by the Director on an annual basis.
 - (c) A valid vehicle registration must be provided at the time of registration, renewal or at any time in which a sticker is requested.
 - (d) All stickers issued pursuant to this chapter shall remain the property of the Putnam County Department of Consumer Affairs.

F. Assignment or transfer of registration.

- (1) A registration to conduct a home improvement business issued to an individual may be assigned or transferred for the remainder of the registration period to a partnership or corporation if the registrant is a member of such partnership or a stockholder of such corporation owning not less than 25% of the outstanding stock at the time of such assignment or transfer, and the remaining stockholders or partners meet the requirements of this chapter.
- (2) Registration of a partnership may be assigned or transferred or the remainder of the registration period to any one member of such partnership, provided that he or she obtains the consent of all of the other members of such partnership and otherwise meets the requirements of this chapter.

G. Miscellaneous provisions governing registration.

- (1) Any change in status, ownership, management, address, trade name or other material change shall be communicated to the Director, in writing, within 15 days of said change.
- (2) Unless suspended, revoked or voluntarily surrendered, any registration issued hereunder shall expire on the last day of the 24th month after issuance.
- (3) The Director, or his or her duly authorized designee, shall use the E-Verify Internet based system, operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration

(SSA), to verify the status of all applicants for a registration certificate prior to such certificate being issued. [Added 4-7-2009 by L.L. No. 7-2009]

§ 135-4. Educational Requirements; home improvement business providing lawn and turf services.

- A. Effective May 9, 2011, this section shall apply to all home improvement businesses that offers to provide or provides lawn or turf services as follows:**
- (1) Every home improvement business that offers to provide or provides lawn or turf services, shall be required to participate and complete a best management practices course for lawn and garden care approved by the Putnam County Commissioner of Health.**
 - (2) Effective May 9, 2011, all applications for registration shall include proof of participation and completion of a best management practices course for lawn and garden care pursuant to this section and as further prescribed by the Director.**
 - (3) Effective May 9, 2011, all applications for renewal of registration shall include proof of completion of a best management practices course for lawn and garden care pursuant to this section and as further prescribed by the Director.**
 - (4) The participation and completion of a best management practice course for lawn and garden care is a one-time education requirement, unless directed otherwise in accordance with this section. Once proof is accepted by the Director, it shall apply to each subsequent renewal application thereafter as further prescribed under this chapter.**
 - (5) If a registered Home Improvement Business can provide a certificate that verifies that he/she has participated and completed a “best management practices course for lawn and garden care” from another municipality and/or state, such certificate shall be deemed acceptable for compliance with this section.**
- B. The Director, in consultation with the Putnam County Commissioner of Health, 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 persons are informed of developing issues, technologies, and laws which may impact the performance of services by such persons in Putnam County.**
- C. The Director, in consultation with the Putnam County Commissioner of Health, shall have the authority to adopt rules and regulations as may be deemed necessary for the administration and enforcement of this section.**

§ 135-5. Home improvement contracts.

- A. Every home improvement contract, as defined herein, subject to the provisions of this chapter, and all amendments thereto, shall be evidenced by a writing and shall be signed by all parties to the contract. The writing shall contain the following:**
- (1) The name, address, telephone number, registration or license number of the contractor.**
 - (2) The approximate dates, or estimated dates, when the work will**

begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date. In addition to the estimated or approximate dates, the contract shall also specify whether or not the contractor and the owner have determined a definite completion date to be of the essence.

- (3) A description of the work to be performed, the materials to be provided to the owner, including make, model number or any other identifying information, and the agreed upon consideration for the work and materials.
- (4) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract and is not paid may have a claim against the owner which may be enforced against the property in accordance with applicable lien laws.
- (5) A notice to the owner purchasing the home improvement that, except as otherwise provided in Subsection A(7) herein, the home improvement contractor is legally required to deposit all payments received prior to completion in accordance with Subdivision 4 of § 71-a of the Lien Law and that, in lieu of such deposit, the home improvement contractor may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.
- (6) If the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased or expenses for which the contractor would be obligated at the time of the payment.
- (7) If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of Subsection A(6) and shall not be required to be deposited in accordance with the provisions of Subsection A(5).
- (8) A notice to the owner that, in addition to any right otherwise to revoke an offer, the owner may cancel the home improvement contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract. Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound. Notwithstanding the foregoing, this subsection shall not apply to a transaction in which the owner has initiated the contract and the home improvement is needed to meet a bona fide emergency of the owner and the owner furnishes the home improvement contractor with a separate dated and

signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this subsection, the terms "owner" shall mean an owner or any representative of an owner.

- (9) A notice that all inquiries and complaints or issues about a contractor should be made to the Director, in writing, with copies transmitted to the Board.
- B. The writing shall be legible, in plain English so that it is understood by both parties to the contract, and shall be in such form to describe clearly any other document which is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor. The writing may also contain other matters agreed to by the parties to the contract.

§ 135-6. Home Improvement Board.

- A. The Home Improvement Board, hereinafter referred to as the "Board," shall consist of nine members and one alternate member. The members of such Board shall be residents of the County and shall be appointed by the Legislature as follows:
 - (1) Two members who are primarily engaged in business as home improvement contractors.
 - (2) One member who is primarily engaged in business as a licensed engineer or building inspector.
 - (3) Three members who are citizens independent of the home improvement business.
 - (4) Three members who are primarily engaged in business as a tradesman."
- B. Of the members first appointed, five shall be appointed for a term of one year, and four shall be appointed for a term of two years. Their successors shall be appointed for a term of two years from and after expiration of the terms of their predecessors in office.
- C. The Board shall elect a Chairman and a Vice Chairman from its own members.
- D. A majority of the Board shall constitute a quorum for the transaction of business.
- E. The Legislature shall fill any vacancy of said Board for the unexpired portion of the term,
upon the recommendation of the Board.
- F. A member of the Board may be removed by the Legislature for misfeasance or malfeasance in office, incompetency, incapacity, neglect of duty or other good and sufficient cause, including absenteeism from meetings of 50% or greater within a one-year period.
- G. The Director shall have the power to temporarily suspend a registrant from engaging in the home improvement business within the County of Putnam for a maximum of 30 days upon an initial determination by the Director that such a registrant is in violation of this chapter. Within 30 days of the issuance of a temporary suspension order, the Board shall convene for a special meeting to consider a full revocation or suspension of the registration pursuant to §135-11.

§ 135-7. Powers and Duties of Board.

The Board shall have the following powers and duties in addition to those elsewhere

prescribed in this chapter:

- A. To hold meetings at least one time per month, and at such other times as the Board may determine as necessary or desirable for the efficient discharge of the business of the Board. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of all of its other official actions.
- B. To adopt rules and regulations in respect to procedure before it and in respect to any subject matter over which it has jurisdiction under this chapter or any other law, which such rule or regulation shall not be inconsistent with the various provisions of this chapter, after a public hearing is held by the Board and subject to the approval of the Legislature. Upon adoption and approval of such rules and regulations, same shall be duly filed with the Clerk of the Legislature and with the Director.
- C. To prepare a manual of its rules and regulations and to furnish copies thereof to persons desiring the same for a fee as fixed by the Board.
- D. To hold hearings on complaints and charges which have been filed by homeowners or the Director of Consumer Affairs, and to make findings of fact and impose penalties and sanctions, in accordance with the provisions of §135-11 hereof.

§ 135-8. Powers and duties of Director.

The Director or his or her duly authorized designee shall have the following powers and duties in addition to those elsewhere prescribed in this chapter:

- A. To establish categories of registration under this chapter and to set fees therefor, subject to the approval of the Legislature.
- B. To examine the qualifications and fitness of registrants for registration under this chapter or of the representatives of such applicants designated for such purpose.
- C. To register applicants possessing or whose representatives possess the requisite qualifications.
- D. To suspend or revoke registrations in accordance with the various terms and provisions of this chapter.
- E. To keep records of all registrations issued, suspended or revoked.
- F. To employ experts, clerks and secretaries and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the Legislature (for such Board). The Legislature is hereby authorized and empowered to make such appropriations as it may see fit for such expenses; the amount of appropriation shall be the estimated charges and expenses, less fees, if any, collected.
- G. To adopt such rules and regulations not inconsistent with the provisions of this chapter as may be necessary with respect to the form and content of applications for registration, the receipt thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his powers and duties as prescribed by this chapter and for the proper administration and enforcement of the various provisions of this chapter, and to amend or repeal any of such rules and regulations.
- H. To suspend the registration of any person pending payment of any fine or penalty, pending compliance with any order of the Director or the Department of Consumer Affairs or with any other lawful order of the

Department of Consumer Affairs.

- I. To automatically suspend the registration of any person who has failed to maintain the required insurance or bond, as outlined in §135-3 hereof; during the full term of his or her registration, which such suspension shall be retroactive to the date upon which said insurance or bond had been canceled or revoked, and to reinstate any such registration upon proof that the aforesaid insurance or bond requirement has been fully complied with.**
- J. To issue appearance tickets, summonses, information, or any other legal process necessary to effectuate the provisions of this chapter.**
- K. To investigate alleged violations of § 135-3D(3) herein. The Director, or his or her duly authorized designee, shall be entitled to request and review records maintained by registrants which demonstrate their compliance with said § 135-3D(3). Upon the completion of an investigation, the Director shall have the power to forward his or her findings to the Board for the institution of proceedings pursuant to §135-11 herein. The determination of the Board shall be subject to judicial review in any court of competent jurisdiction. [Added 4-7-2009 by L.L. No. 7-2009]**

§ 135-9. Prohibited acts.

The following acts are strictly prohibited:

- A. Abandonment or failure to perform, without justification, any home improvement contract or project engaged in or undertaken by the contractor.**
- B. Making any substantial misrepresentation in the procurement of a home improvement contract, or making any false promise likely to influence, persuade or induce.**
- C. Any fraud in the execution of or in the material alteration of a home improvement contract, or making any false promise likely to influence, persuade or induce.**
- D. Any fraud in the execution of or in the material alteration of any contract, mortgage, promissory note or other document incident to a home improvement transaction.**
- E. Preparing or accepting any mortgage, promissory note or other evidence of indebtedness upon the obligation of a home improvement transaction with knowledge that it represents a greater monetary obligation than the agreed-upon consideration for the home improvement work.**
- F. Directly or indirectly publishing any advertisement relating to home improvements which contains an assertion, representation or statement of fact which is false, deceptive or misleading, provided that any advertisement which is subject to and complies with then existing rules, regulations or guides of the Federal Trade Commission shall not be deemed false, deceptive or misleading; or by any means or advertising or purporting to offer the general public any home improvement work with the intent not to accept contracts for the particular work or at the price which is advertised or offered to the public.**
- G. Disregard and violation of the building, sanitary and health laws of this state or of any political or municipal subdivision thereof.**
- H. Failure to notify the Director, in writing, of any change or control in ownership, management or business name or location.**
- I. Conducting a home improvement business in any name other than the one in which the contractor is registered.**

- J. Failure to comply with any order, demand or requirement made by the Director pursuant to the various provisions of this chapter.**
- K. Failure to list registration number in any and all advertisements for the registered home improvement contracting business.**
- L. Failure to maintain the proper insurance, surety license and permit bond, as required by § 135-3 hereof.**
- M. Failure to provide proof of completion of a best management practices course for lawn and garden care, as required by §135-4 hereof.**

§ 135-10. Grant or denial of registration or renewal.

A. Within 60 days after receipt of a complete application in proper form, the Director, and his or her duly authorized designee, shall grant or deny it. The Director shall grant the registration or renewal unless it is determined that the applicant:

- (1) Is not financially responsible.**
- (2) Is unqualified to engage in the home improvement business.**
- (3) Has failed to furnish information as required.**
- (4) Has made a false statement of a material fact or a material omission in the application for the registration.**
- (5) Has consistently failed to perform contracts.**
- (6) Has manipulated assets or accounts or has engaged in fraud or bad faith.**
- (7) Has failed to carry and maintain worker's compensation, public liability insurance and a surety bond as required by § 135-3 of this chapter.**
- (8) Has been subject to the imposition of penalties or sanctions as a result of a hearing held by the Board upon a violation of any provision of this chapter at least two times in the past two years.**

B. Military service exceptions.

- (1) Registrants who are called to active duty will have their registrations frozen as of the date of their deployment. Upon return from active duty, the registrant will provide documentation to the secretary of the Home Improvement Board detailing the dates of his or her deployment and proof he or she meets all other requirements of the Home Improvement Law prior to the reactivation of his or her frozen registration. If the deployment was greater than 30 days, the registrant will be credited for each day of military deployment, and his or her registration will be extended by a similar number of days.**
- (2) Once the reactivated registration expires, the registrant's renewal registration will be credited with the same amount of credit time as the hold accrued during his or her "frozen" period. All fees charged for that year will be prorated to take into account this credit time.**
- (3) This military service exception will be retroactive to any deployment that occurred after September 11, 2001.**

C. A denial of a registration or renewal shall be made by the Director in writing and shall set forth a statement of the reason or reasons therefor. If the registration or renewal is refused, the applicant may, within 10 days from the date the notice of refusal is mailed, request a hearing. Such hearing must be held within 30 days of the request and the Director must render a decision within a reasonable time, but in no case shall such time be more than 45 days from the date of the hearing. Said hearing shall be conducted in accordance with the procedures

outlined in §135-11 hereof

- D. The determination made by the Director shall be subject to judicial review in accordance with Article 78 of the New York State Civil Practice Law and Rules in a proceeding brought within four months after the Director issues a written denial.

§ 135-11. Civil penalties or procedures.

- A. The Board and/or Director may revoke or suspend for a period of time the registration issued under this chapter in accordance with the procedure set forth in Subsections B, C and D of this section. Grounds for suspension, revocation or any other penalty included in Subsection G hereof shall include grounds to deny a registration renewal under §135-10, or the commission by a registrant/person of an act or acts in violation of §135-5 and §135-9, or any violation described in §135-12 hereof
- B. In order to commence the hearing process, the Director shall forward written notice to the registrant/person by registered or certified mail to the address given in the application made by the registrant/person for said registration, which such notice shall contain the following:
- (1) A copy of the charges upon which the hearing is brought;
 - (2) A notice of the fact that the registrant/person shall answer the charges in writing within 10 days of the date of the written notice;
 - (3) The date of the hearing to be held before the Board;
 - (4) Notice of the fact that the registrant/person has the right to be represented by counsel at said hearing;
 - (5) Notice of the fact that the registrant/person has the opportunity to call witnesses to testify at said hearing; and
 - (6) Notice of the potential penalties which may imposed upon the registrant/person if the Board concludes that the registrant/person has committed the offenses for which he has been charged.
- C. The Director shall have the power to subpoena witnesses to testify and to produce documents at said hearing.
- D. A hearing shall be held before the Home Improvement Board on the charges within 60 days of the date of the written notice outlined in Subsection B of this section. A record of such hearing shall be made and kept by the Board.
- E. At such hearing, the registrant/person may be represented by counsel and may offer evidence in his or her behalf. Compliance with technical rules of evidence shall not be required, but evidence must be relevant and material. The burden of proving the charges by substantial evidence shall be upon the Director, or his or her duly authorized designee. Once the Board hears all of the testimony, it shall issue findings of fact, and shall make a determination as to the penalties or sanctions to be imposed upon the registrant/person, if any, within 90 days. Such determination shall be subject to judicial review in accordance with Article 78 of the New York State Civil Practice Law and Rules in a proceeding brought within four months of when written determination is rendered.
- F. Subsequent to receipt of the findings of fact and determinations of the Board, the Director, or his or her duly authorized designee, shall immediately notify the registrant/person in writing, by registered or certified mail, of the

penalties which have been imposed upon him or her, their effective date, and the length of time in which the registrant/person will be subject to and restrained by such penalties or sanctions.

- G. Any one or a combination of the following sanctions and penalties may be recommended by the Director as a result of a hearing held in accordance with the provisions of Subsections B, C, D, E and F hereof, and which may be imposed upon a registrant/person by the Board:**
- (1) Issuance of a written warning to the registrant/person, the content of which shall be determined by the Director;**
 - (2) Suspend the registration for such period of time as shall be recommended by the Director and determined by the Board;**
 - (3) Revoke the registration for a specified period of time as recommended by the Director and determined by the Board;**
 - (4) Payment of a civil penalty, as recommended by the Director and determined by the Board, which amount shall not exceed \$5,000;**
 - (5) The requirement that the registrant/person provide restitution, in whole or in part, to the aggrieved homeowner, if any.**

§ 135-12. Criminal violations.

Specific violations and penalties.

- A. It shall be a Class A Misdemeanor, as defined in the New York State Penal Law, punishable by a term of imprisonment not exceeding one year and a fine not exceeding \$1,000, to own, operate, conduct or hold oneself out as being able to conduct a home improvement business in Putnam County without registration as required by this chapter, either individually or through another, or to continue to own, operate or conduct a home improvement business after such registration has been denied, suspended, revoked or has expired.**
- B. It shall be a violation, as defined in New York State Penal Law, punishable by a term of imprisonment-not exceeding 15 days and a fine not exceeding \$250, to:**
- (1) Make a false statement or provide false information in making application for registration, including a renewal or duplicate;**
 - (2) Fail to notify the Director, in writing, of any change of control in the ownership, management or business name or location of a home improvement business within 15 days thereof;**
 - (3) Fail to adhere to any of the requirements as set forth in § 135-5 of this chapter;**
 - (4) Abandon or fail to perform or complete, without justification, any home improvement contract or deviate from the plans or specifications of a home improvement contract in any material respect without the consent of the owner;**
 - (5) Fail to disclose on all advertising for a home improvement business and in all contracts with an owner for a home improvement the registration number issued pursuant to this chapter or to advertise in a false, deceptive or misleading manner;**

- (6) **Fail to maintain proper insurance and bonds as required in §135-3 of this chapter;**
- (7) **Fail to establish or maintain financial solvency, taking into account the scope and size of a person's business in relation to the person's total current assets, liabilities, credit rating, net worth and circumstances affecting solvency. Such financial information shall be confidential and not a public record, but, where relevant, shall be admissible as evidence in any administrative hearing or judicial action or proceeding;**
- (8) **Possess a lack of ability to engage in home improvement contracting as evidenced by work performed in a poor and unworkmanlike manner or the work involved is inadequate or incomplete;**
- (9) **Make any substantial misrepresentation in the procurement of a home improvement contract or make any false promise of character likely to influence, persuade or induce;**
- (10) **Perpetuate any fraud in the execution of or in the material alteration of any contract, mortgage, promissory note or other document incident to a home improvement transaction;**
- (11) **Prepare or accept any mortgage, promissory note, or other evidence of indebtedness upon the obligation of a home improvement transaction with knowledge that it recites a greater monetary obligation than the agreed consideration for the home improvement work;**
- (12) **Publish any advertisement directly or indirectly relating to home improvements which contains an assertion, representation or statement of fact which is false, deceptive or misleading;**
- (13) **Conduct a home improvement business in any manner other than the one in which the contractor is registered;**
- (14) **Failure to comply with any order, demand or requirement lawfully made by the Director under and within the authority of this chapter;**
- (15) **Demand or receive any payments prior to the signing of a home improvement contract;**
- (16) **Receive at or before the time of execution of a contract, a deposit of more than 1/3 of the contract price; and**
- (17) **Failure to display a valid registration sticker as per §135-3.**

§ 135-13. Fees.

- A. The fee for a registration to conduct a home improvement business, which shall be for a term of two years, shall be \$250. Fees for renewals received after the expiration date shall be \$275. The fee for issuing a duplicate registration for one lost, destroyed or mutilated shall be \$20.**
- B. The fee for participation in a lawn or turf services course shall be determined by the Director in consultation with the Putnam County Commissioner of Health, subject to the approval of the Legislature.**
- C. The Director shall refund \$50 of the fee paid by any applicant in the event that the application for a registration is denied or the applicant for the registration has predeceased its issuance or has been inducted into the**

military service prior to the issuance. Such refund is subject to approval by the Director and after audit by the Commissioner of Finance.

§ 135-14. Advertising.

All advertising for a home improvement business shall contain the registration number issued pursuant to this chapter.

§ 135-15. Construal; other licenses.

- A. Any registration issued pursuant to this chapter shall not be construed to authorize the registrant to perform any particular type of work or kind of business that is reserved to qualified licensees under separate provisions of state or local law.
- B. Nothing in this chapter shall be construed to limit or restrict the power of a town or village to regulate the quality, performance or character of the work of contractors, including a system of permits and inspections that are designed to secure compliance with and aid in the enforcement of applicable state and local building laws or to enforce other laws necessary for the protection of the public health and safety. Nothing in this chapter shall be construed to limit or restrict the power of a town or village to adopt any system or permits requiring submission to and approval by the town or village of plans and specifications for an installation prior to the commencement of construction of the installation of or inspection of work done.
- C. This chapter relates only to the area of Putnam County. Notwithstanding, any village or town within Putnam County may preempt this chapter by expressly stating such and enacting its own regulating or licensing of the home improvement business.

§ 135-16. Provisions not subject to waiver.

The provisions of this chapter are intended for the protection of an owner and shall not be subject to waiver by an owner in a home improvement contract otherwise.

§ 135-17. Applicability.

- A. Nothing set forth in this chapter shall subject the County of Putnam or its officials, agents, or employees to liability for damages or otherwise arising out of or related to the conduct of any home improvement business by a registrant.
- B. The provisions of this chapter shall not apply to any home improvement to be performed under a home improvement contract entered into prior to the effective date of this chapter.
- C. Notwithstanding any provision of this chapter to the contrary, this chapter shall not apply to:

- (1) Plumbing, as defined in Chapter 190, Plumbers;**
 - (2) Electrical, as defined in Chapter 145, Electricians; and**
 - (3) Work or services performed by a person within the scope of an occupation, craft, or profession in which such person has met the standards of competency or experience established by state law as a condition to engaging in such occupation, craft or profession.**
- D. The Director is empowered to establish administrative procedures to carry out the provisions of this chapter in conformity with the provisions thereof.**

Section 2.

This local law shall take effect immediately.