

# DRAFT Anti-Littering Local Law

September 2, 2015

## Section 1. Legislative Findings and Intent.

New York Courts have observed that “it is virtually axiomatic that problems [including] littering, and related problems of public safety and convenience are legitimate concerns of government.” Duchain v. Lindsay, 42 A.D.2d 100 (2<sup>nd</sup> Dept., 1973). In the Town of Copake, there has been an identified and documented issue of flyers, brochures, and similar items being widely tossed about or placed unsecured in public and private places, which, both immediately and by action of wind or water, create ground litter on private and public lands and within and upon water bodies in the Town, and directly create unsightly conditions and burden the landowners and public for their cleanup. It is appropriate and desirable, and in the interest of the Town and its citizens, to take action to eliminate or mitigate this identified and increasing litter problem.

Any such action must not, however, run afoul of the Constitutional right to free speech, which includes the distribution of communication. The U.S. Supreme Court has said “Liberty of circulating is as essential to [freedom] as liberty of publishing; indeed, without the circulation, the publication would be of little value.” Lovell v. City of Griffin, Ga., 303 U.S. 444. The right to approach persons at home or deliver communications to their homes is specifically protected. *See, e.g. Martin v. City of Struthers, Ohio*, 319 U.S. 141 (U.S. Supreme Court, 1943). The right to circulate or distribute is not, however, absolute. The United States Supreme Court has stated “nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets.” Schneider v. State of New Jersey, Town of Irvington, 308 U.S. 147. The Court in *Schneider* held that it was impermissible to punish a person for handing out literature when it was the *recipient* who threw it on the ground and the link to the distributor was therefore indirect, but went on to emphasize that “This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets.” *Id.*

Respecting these principles, this Local Law fully protects speech rights, including specifically the right to freely deliver or distribute papers, letters, flyers, and similar materials to intended recipients, at their residences or elsewhere, and is targeted only to the narrow and valid purpose of ensuring that the person or entity circulating those materials, which, due to their physical composition or construction are susceptible to being dispersed by the elements, does not *directly* create litter and unsightly mess or impose needless burdens upon landowners or the public to clean them up.

## Section 2.

1. No person shall throw, deposit or place, or cause to be thrown, deposited or placed, any specified item upon the lawn, driveways, grade-level exterior walkways, or otherwise

upon the ground or grounds of any residence or residential parcel of land without the intent to promptly retrieve or recover possession of such item, provided, however, that such person may securely place any such specified item upon, within, or affixed to any structure upon or attached to such residence or residential parcel, including any porch, steps, awning, doorway, vestibule, fixture or other attached structural element, or within a receptacle in contact with such structure, or otherwise secure such specified item in place in contact with such structure, so that it is affixed, confined, or held in place in such a manner as to prevent such [specified item] from being deposited either directly or by natural elements upon the lawn, driveways, grade-level exterior walkways, or otherwise upon the ground or grounds of such residential parcel or other private or public lands, or upon or within any water body, within the Town of Copake.

2. Any person who throws, deposits or places, or causes to be thrown, deposited or placed, any specified item upon or within any residential parcel of land, such that the specified item is subsequently deposited as a result of natural elements, including wind or water, upon the lawn, driveways, grade-level exterior walkways, or otherwise upon the ground or grounds of such residence or residential parcel of land or upon other private or public lands or upon or within any water body, shall be deemed to have caused such item to have been deposited upon the lawn, driveways, grade-level exterior walkways, or otherwise upon the ground or grounds of such residence or residential parcel of land or other private or public lands or upon or within such water body.
3. No person shall throw, deposit or place, or cause to be thrown, deposited or placed, any specified item within or upon any water body, or upon the lawn, driveways, exterior walkways, or otherwise upon the ground or grounds of any public land nor deposit or place, or cause to be deposited or placed, any specified item upon or within such public land or any structure thereon, such that the specified item is subsequently deposited as a result of natural elements, including wind or water, upon the lawn, driveways, exterior walkways, or otherwise upon the ground or grounds of any public or residential land, or upon or within any water body, within the Town of Copake.
4. Any person, corporation, organization, or entity of any kind in whose behalf or for the purposes of which any agent, including an employee or contractor of such person, corporation, organization, or entity, commits any act in violation of this section, shall be guilty of the violation resulting from the act of such agent, and it shall not be necessary to charge such agent with a violation in order to charge and convict such person, corporation, organization, or entity with such violation.
5. In any prosecution under this local law the presence within or upon any water body, or upon any lawn, driveway, walkway, or otherwise upon the ground or grounds of any parcel or lands as set out in subdivisions one, two, three, and four, of any specified item bearing evidence of having been in the prior possession of, or been prepared, assembled, printed, or manufactured by or on behalf of any person, corporation, organization, or entity, shall be presumptive evidence that said specified item was thrown, deposited or placed, or caused to be thrown, deposited or placed within or upon such water body or upon such lawn, driveway, walkway, or otherwise upon such ground or grounds by such person, corporation, organization, or entity.

6. For purposes of this section, a “specified item” is defined as any flyer, letter, card, brochure, leaflet, paper, magazine, newspaper, or other similar object consisting of one or more pages or sheets of paper, newsprint, cardboard, plastic, laminate, or other material, whether or not contained in a wrapper. A lawn sign affixed to the ground shall not be deemed a prohibited item.
7. Any person, corporation, organization, or entity who violates, in aggregate, subdivision one, two, three, or four of this section in relation to five or more residences or residential parcels or five specified items within or upon any body of water or upon public lands within a twenty-four hour period shall be guilty of a violation punishable by a fine of five hundred dollars, and each additional violation of subdivision one, two, three or four in excess of five within such twenty-four hour period shall be an additional and separate violation, each of which shall be punishable by a fine of not more than two hundred and fifty dollars.

#### Section 3.

8. Severability. If any provision or part of this local law, or the application thereof to any person or circumstances, is adjudged unlawful, invalid, or unconstitutional, such adjudication shall not impair the validity, force, or effect of any other provision or part of this local law or the application of this local law, or any provision or part thereof, to any other person or circumstances.

#### Section 4.

9. Authorization. This local law is enacted pursuant to the provisions of section 10 of the New York Municipal Home Rule Law and section 10 of the New York Statute of Local Governments.

#### Section 5.

10. Effective Date. This local law shall take effect immediately upon filing with the Secretary of State.