

Referral No. 1403  
September 16, 2009

**LOCAL LAW NO. 3 OF 2009  
COUNTY OF ROCKLAND  
STATE OF NEW YORK**

(Introduced by: Hon. Edwin J. Day)

Mr. Day offered the following Local Law, which was seconded by Mr. Jobson and by roll call vote was adopted:

A local law mandating additional penalties and impoundment of equipment for persons who operate as home improvement contractors in the County of Rockland without a valid license.

Be it enacted by the legislature of the county of Rockland as follows:

**Section 1. Name of local law**

This law shall be known as “the Rockland County Consumer Home Improvement Protection Act of 2009.”

**Section 2. Legislative intent.**

Currently, unlicensed contractors are subject to certain penalties. However, there is little incentive for them to apply for and receive a home improvement license as they are still able to operate in the county because they do not lose their ability to so operate. The law currently in effect does not provide for impoundment of the unlicensed operator’s equipment, which would prevent him or her from so operating within the county while charges are pending against them. This local law encourages such operators to apply for and receive home improvement licenses, which would then bring them into compliance with the laws of Rockland County.

**Section 3. Impoundment of property used to commit offenses in violation of § 286-3.**

Section 286-21(H) is added to Chapter 286 of the laws of Rockland County and reads as follows:

H. Impoundment

In addition to the criminal and civil penalties, the Rockland County department having enforcement powers may, in its discretion, impound the equipment used during the violation of § 286-3 as follows:

1. Any police officer or authorized officer, employee or agent of the Office of Consumer Protection, 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 section 286-3 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. If stopping the work and impounding any vehicle, tools or implements shall result in rendering the premises being worked on uninhabitable or unsecured, the police officer or authorized officer, employee or agent of the Office of Consumer Protection issuing the notice of violation shall have the discretion to permit the worker or workers to either complete the work or in some manner render the premises temporarily habitable and secure prior to impounding any vehicle, tools or other implements. Any vehicle, tool or implement seized pursuant to this section shall remain in the custody of the department or agency of the police officer or authorized officer, employee or agent who impounded the vehicle, tools or other implements.
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 implement 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.

3. The Coordinator or the designee of the Coordinator shall hold a hearing in accordance with the provisions of section 286.22 of the Laws of Rockland County not otherwise in conflict with this section, to adjudicate the violation of section 286-3 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 section 286-21(E), 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, corporate owner or partner, parent, legal guardian or spouse of the person served with a notice of violation pursuant to section 286-21(E) at the time of the seizure. In the event that the property impounded is released to the owner of said property pursuant to subdivision 4) of this section, the hearing may be rescheduled to a later date within a reasonable time period.
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 Coordinator in an amount sufficient to cover: (a) the maximum civil penalties which may be imposed for the violation of section 286-3 of this article underlying the seizure and impoundment; and (b) all reasonable costs for removal and storage of such vehicle, tool or implement. 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 Coordinator. The owner of said vehicle, tool or other implement seized is entitled, within forty-eight (48) hours of a written request, to a hearing before an independent hearing examiner to determine if there was reasonable cause to seize and impound said vehicle, tool or other implement. In the event the independent hearing examiner determines that there was not reasonable cause to seize said vehicle, tool or other implement, said vehicle, tool or other implement shall promptly be released to its owner upon written demand and proof of ownership as provided above.

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 section 286-3 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 section 286-3 of this article underlying the seizure and impoundment; and (b) 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 Coordinator in the form and containing the information required by the Coordinator. 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 section 286-3 of this article or found to be in violation of the provisions of section 286-3 of this article, the owner may obtain release upon payment of 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 Coordinator, 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 section 286-3 of this article.
7. After adjudication of the violation underlying the seizure in accordance with subdivision 3 of this section, if the Coordinator or the designee of the Coordinator finds that the vehicle, tool or other implement has not been used in connection with unlicensed activity under the provisions of section 286-3 of this article, the Office of Consumer Protection shall promptly cause such vehicle, tool or other implement to be released to its lawful owner upon written demand of the owner. If applicable, the Department of Consumer Protection shall also promptly return any cash bond posted pursuant to subdivision 4 of this section in accordance with the determination of the Coordinator or the designee of the Coordinator pursuant to subdivision 3 of this section.

8. In the event that property impounded pursuant to this subsection is not released to its owner due to the owner's failure to respond to the notice of violation and appear at three hearing dates scheduled at least one month apart, said property will be considered lost and abandoned property, the disposition of which is governed by New York State law under Personal Property Law § 253.

**Section 4. Severability.**

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, effect or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application to the person, individual, corporation, firm, partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 5. Effective date.**

This local law shall take effect immediately upon filing with the New York state secretary of state.

The roll call vote resulted as follows:

Ayes:	13	(Legislators Bierker, Day, Grant, Hood, Jr., Jackson, Jobson, Meyers, Michel, Moroney, Murphy, Schoenberger, Sparaco, Cornell)
Nays:	04	(Legislators Coker, Darden, Soskin, Wolfe)