

Submitted by the County Executive and Introduced By

LOCAL LAW NO.19 - 2012

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE  
IN RELATION TO LICENSING THE OPERATORS OF STORAGE WAREHOUSES

Passed by the Nassau County Legislature on November 19, 2012  
Voting; ayes: 10 nays: 9 abstained: 0

Became a law on November 27, 2012 with the approval of the Deputy County Executive  
acting on behalf of County Executive

APPROVED AS TO FORM  
Deputy County Attorney

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. A new title is hereby added to chapter twenty-one of the Nassau County

Administrative Code as follows:

Title D-17

STORAGE WAREHOUSE OPERATORS

Section	21-26.0	Legislative intent
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**§ 21-26.0. Legislative intent.**

This legislature finds and determines that in the interest of protecting County residents who have entrusted their belongings to third-parties, and to help safeguard the health and wellness of those residents, it is necessary to impose licensing and other requirements upon the operators of storage warehouses.

**§ 21-26.1. Definitions.**

For purposes of this title:

“Person” means and includes natural persons, corporations, partnerships, associations, LLCs, joint stock companies, and all other entities of any kind capable of being sued.

"Storage warehouse" means a building or structure, or any part thereof, in which a consumer's household goods are received for storage for compensation, except warehouses in which such goods are stored by or on behalf of a merchant for resale or other use in the course of the merchant's business.

"Storage warehouse operator" means any person operating any storage warehouse as defined herein.

"Household goods" shall mean property commonly used in a household, including but not limited to furniture, clothing and appliances but not including goods stored by, or on behalf of, a merchant for resale or other use in the merchant's business.

“Commissioner” shall mean the Nassau County Commissioner of Consumer Affairs or his or her designated agent.

"Bill for services" means a writing signed by the storage warehouse operator or his authorized agent stating the total costs for the following:

- a. the monthly charge for storage of the goods;
- b. if applicable, the charge for a minimum number of months' storage;
- c. the charge for packing, containers, warehouse labor in, transportation to the warehouse, padding or sanitizing;
- d. any charges imposed by the storage warehouse operator, including the charges for warehouse labor out and transportation from the warehouse, if applicable.

"Inventory" means an itemized list, signed by the storage warehouse operator or his authorized agent, indicating the condition of each item which is being stored.

"Written estimate" means a writing signed by the storage warehouse operator or his authorized agent setting forth:

- a. the charge, if applicable, but not exceeding \$10 for the written estimate based upon an

actual physical inspection;

- b. a tally of the household goods included in the estimate, which shall not be construed to be an inventory as defined by §2-321 "Inventory";
- c. the estimated monthly charge for storage of the goods;
- d. if applicable, the estimated charge for packing, containers, warehouse labor in transportation to the warehouse, padding or sanitizing;
- e. if applicable, the minimum monthly charge or the minimum number of months' storage charge;
- f. any other charges imposed by the storage warehouse operator, including a statement that there will be a charge for "warehouse labor out" and "transportation from the warehouse" and a description of how these charges will be calculated;
- g. any limitation on liability for loss or damage to household goods;
- h. the name, principal place of business and telephone number of the storage warehouse operator, and the street address, and telephone number where the goods will be stored.

#### **§ 21-26.2. License required.**

1. After January 1, 2013, no person shall, within the County of Nassau, operate a storage warehouse either separately or in conjunction with some other business, without first having obtained a license in accordance with and subject to the provisions of this Title.
2. Such license shall be displayed in a conspicuous place at the designated place of business of the licensee.
3. Such license shall not in any way supplant the licensing and display requirements of any applicable Federal or State laws.

#### **§ 21-26.3 Regulations.**

The commissioner shall make such regulations as deemed necessary for the proper implementation and enforcement of this title.

#### **§ 21-26.4. Application for License; Fee; Bond; Insurance**

1. Applications for storage warehouse operator licenses shall be made to the Commissioner of Consumer Affairs. The application shall contain the following information:
  - a. Name and description of the applicant's business enterprise. Individuals using their own name or a trade name must present a certified copy of the business certificate on file in the Nassau County Clerk's Office. A partnership conducting business must submit a certified copy of the partnership certificate on file in the Nassau County Clerk's Office. A corporation must furnish a copy of the Secretary of State's Filing receipt. A Corporation operating under an assumed name (or "DBA") must submit an Assumed Name Certificate that has been filed with New York State authorizing the use of that name in Nassau County. All corporations must furnish the original and current corporate structure

naming all principals, officers, directors and stockholders including all minutes showing changes made to the corporate structure.

b. All applicants must submit acceptable evidence of identity. This proof must be a state issued Department of Motor Vehicles Driver License or Non-Driver Identification Card of the owner or owners of the business.

c. The applicant's legal address and address of all places of business within Nassau County and the address of a designated agent for service of process.

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 use said premises and a copy of lease or deed of the business premises.

e. A description of the nature of the business to be conducted and/or being conducted by the applicant in Nassau County.

f. A statement that the applicant is at least 18 years of age.

g. A statement as to whether or not the applicant has, within the past 10 years, been convicted of a crime or violation of any municipal ordinance, 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.

h. Two photographs of the applicant, taken not more than 60 days prior to the date of application, which clearly depict the head and shoulders of the applicant and which shall be 2 inches wide by 2 inches tall.

2. Every application for a storage warehouse operator's license shall be accompanied by a non-refundable application fee of five hundred dollars (\$500.00) in the form of a certified check or postal money order payable to the County of Nassau for a two-year license.

3. All applicants must furnish certificates of public liability and property damage insurance in the amount of one hundred thousand dollars (\$100,000.00) per person, three hundred thousand dollars (\$300,000.00) per occurrence, bodily injury and fifty thousand dollars (\$50,000.00) each occurrence and aggregate, property damage.

4. No applicant for a license or license renewal shall have any un-negotiated judgments, liens, tax warrants or unpaid child support orders.

5. Every license issued hereunder shall be valid for the operation of one storage warehouse. Licensees may request additional licenses to operate additional storage warehouses from the Commissioner for a fee of one-hundred dollars per location.

#### **§ 21-26.5. Issuance of License**

1. Upon receipt of the license application, fee and bonds required of the applicant, the Commissioner shall review the application and, if appropriate, issue a license to the applicant.

2. The Commissioner shall keep a record of all licenses issued, suspended and/or revoked, as well as any other matters herein described.

#### **§ 21-26.6. Expiration and Renewal of License**

Every license shall expire two years after its issuance. Every license may be renewed upon payment of the required renewal fee in the amount of five hundred dollars (\$500.00) and filing a renewal application with the Commissioner no earlier than 30 days, and no later than 15 days before the license is due to expire, certifying that no changes have occurred with respect to any of the facts or information required or supplied on the original application, or, if there have been any changes, the applicant shall furnish the facts and information relating to such changes and shall comply with the requirements of this law.

#### **§ 21-26.7. Denial or Revocation of License; Appeals**

1. A license may be denied, suspended, or revoked when the applicant or licensee, or any of its principals, officers, or directors, or any of its stockholders owning more than 5% of its outstanding stock of the corporation has been convicted of a crime which, in the judgment of the Commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this Title, or has been convicted of any other crime which, in accordance with Article 23a of the Correction Law, would provide a justification for the Commissioner to refuse to issue or renew, or to suspend or revoke, such license.

2. A license may be denied, suspended, or revoked when the applicant or licensee, or any of its principals, officers or directors, or any of its stockholders owning more than 5% of its outstanding corporate stock has omitted or misrepresented the facts or circumstances underlying any information contained in the license application.

3. A license may be denied or revoked when a person has been found by a court of any state to have practiced civil fraud, deceit, misrepresentation in conjunction with a storage warehouse business or other business.

4. The initial determination to deny, suspend, or revoke a license under this subsection shall be made in writing by the Commissioner.

5. Within 60 calendar days of the initial determination to deny or revoke a license under paragraphs 1 through 4 above, an aggrieved applicant or licensee may request a formal hearing. Such request shall be addressed via certified mail to the Commissioner of Consumer Affairs. Within a reasonable time thereafter, the Commissioner shall appoint an independent hearing officer with the authority to compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith require the production of any evidence relating to any matters affecting the determination. The applicant shall be advised of

the hearing date and his/her right to be represented by counsel at said hearing. The hearing officer shall render his/her Decision and Recommendation to the Commissioner within 30 calendar days of the hearing. The Commissioner will notify the applicant/licensee within a reasonable time thereafter of his/her Final Determination with respect to the disposition of his license/application for license.

#### **§ 21-26.8. Non-Transferability of License**

No license shall be assignable or transferable except as hereinafter provided. A license to conduct business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or a stockholder of such corporation owning not less than twenty-five (25) percent of the outstanding stock at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership provided he obtains the consent of all of the other members of such partnership. The application of such transfer or assignment must be accompanied by proof satisfactory to the Commissioner that the requirements herein provided have been complied with. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the Commissioner and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made upon a payment fee of one hundred dollars (\$100).

#### **§ 21-26.9. Duties of warehouse operator.**

Every storage warehouse operator shall comply with the provisions of this title and regulations promulgated by the commissioner setting forth requirements for estimates and any other rules and regulations promulgated to implement and enforce this title.

#### **§ 21-26.10. Schedule of rates.**

Every storage warehouse operator shall, upon obtaining a license, file with the commissioner schedules showing the rates and charges for the storage and handling of property in the warehouse, and such schedules shall be kept in convenient form and be open at all times during business hours to public inspection at the warehouse or warehouses and the office of the commissioner. Prior to accepting any goods for storage, the schedule of all rates and charges must be presented to the individual requesting the goods to be stored. One copy of this schedule shall be retained by the individual requesting storage and another shall be signed by such individual and retained by the warehouse operator. Any rate or charge not included on such document may not be collected at a later date.

#### **§ 21-26.11. Bond.**

Each storage warehouse operator shall file before receipt of a storage warehouse operator's license and maintain with the commissioner a surety bond in the sum of ten thousand dollars

(\$10,000.00) executed by the storage warehouse operator as principal, and a surety company authorized to do business in this County as surety, payable to the County of Nassau and conditioned upon the storage warehouse operator's compliance with the provisions of this title and any regulations duly promulgated and upon the further conditions that the licensee will pay to the County any fine, penalty or other obligation within thirty days of its imposition and faithfully account in the manner required by law to the owners of all goods, wares, or other property that the storage warehouse operator receives, handles, stores or otherwise deals in as a storage warehouse operator. The commissioner may increase the amount of the bond required of storage warehouse operators.

**§ 21-26.12. Insurance.**

Every warehouse operator shall offer insurance to each customer in accordance with terms and conditions to be determined by the commissioner but in no event shall any goods be insured for less than the amount established by the commissioner. All customers shall be informed of the minimum insurance rate and the availability of greater insurance and the charges made for such additional insurance.

**§ 21-26.13. Form contract.**

The commissioner may establish a form contract for use by all warehouse operators.

**§ 21-26.14. Penalties.**

1. Notwithstanding any provisions to the contrary contained in this title, the Nassau County Charter, the Nassau County Administrative Code or any other local law, a failure to comply with any of the provisions of this Title shall constitute a violation and shall be punishable by a fine not exceeding five thousand (\$5,000.00) dollars, or imprisonment for a period not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of an offense shall constitute a separate and distinct violation hereunder for each day the offense is continued.
2. In addition to the penalties provided above, any offense against the provisions of this Title shall subject the person committing the offense to a civil penalty in the amount of five hundred dollars (\$500.00) for each day that the offense shall continue, collectible by and in the name of the County of Nassau.

**§ 21-26.15. Unfair trade practices.**

1. Notwithstanding the provisions of this title, the actions specified in this section shall be considered unfair trade practices pursuant to section 21-10.2 of this Code and subject to the penalties set forth therein.
2. Oral Disclosures.
  - a. It is a deceptive practice for a storage warehouse operator to fail to disclose to a consumer in response to a telephone inquiry about storage:
    - i. that the consumer has a right to a written estimate based on a physical inspection of the consumer's goods before any goods are removed by the warehouse operator;
    - ii. the charge, if applicable, but not exceeding \$10, for the written estimate based upon a

physical inspection;

iii. the street address where the goods will be stored;

iv. whether there is a minimum monthly storage charge or charge for a minimum number of months' storage and, if so, the amount of the charges;

v. the warehouse operator's storage rate per unit;

vi. the total charge customarily imposed by the warehouse operator for three months' storage of the following bedroom furniture:

1 double bed or 2 single beds

1 bureau or dresser

1 chair

1 night table

vii. whether the warehouse operator imposes charges for warehouse labor in, padding, papering, storage preparation, or sanitizing and, if so, the amount of the charges;

viii. the warehouse operator's transportation charges to the warehouse;

ix. the warehouse operator's charge for containers;

x. the warehouse operator's charge for packing;

xi. any other charges that will be imposed by the warehouse operator.

b. It is a deceptive practice for a storage warehouse operator to fail to:

i. give a consumer a printed copy of the oral disclosures prior to picking up the goods for storage;

ii. retain a copy of the disclosures signed by the consumer acknowledging receipt thereof.

c. It is a deceptive practice for a storage warehouse operator to represent any service as legally mandatory when it is optional (e.g. sanitizing).

### 3. Written Estimate.

a. It is a deceptive practice for a storage warehouse operator to accept, or offer to accept, household goods for storage without issuing the consumer a written estimate, based upon an actual physical inspection, before any goods are removed to storage, except that if a customer requests that the warehouse operator accept household goods for storage without receiving a written estimate the warehouse operator, before receiving any goods:

i. shall have the consumer sign a statement waiving his/her right to a written estimate and giving the reasons therefor;

ii. shall orally communicate to the consumer the information required by §2-322;

iii. shall, within 5 business days after arrival of the consumer's goods at the warehouse, send the consumer a statement based upon an examination of the goods being stored, containing the following information:

(a) the monthly charge for storage of the goods (including any minimum number of months' storage charge);

(b) if applicable, the charge for packing, padding, papering, containers, warehouse labor in, transportation to the warehouse, storage preparation or sanitizing;

(c) any other charges that will be imposed by the storage warehouse operator;

(d) any limitation on legal liability for the negligent loss or damage to the goods.

b. It is an unconscionable practice for a storage warehouse operator to directly or indirectly discourage a consumer from receiving a written estimate based upon an actual physical inspection.



4. It is a deceptive practice for a storage warehouse operator to accept household goods for storage without providing the consumer, at the time the household goods are picked up, with an inventory of the goods being stored.

5. It is a deceptive practice for a warehouse operator to impose any charge upon a consumer who cancels a storage agreement before 3 p.m. on the day preceding the scheduled storage of the goods.

6. It is a deceptive practice for a storage warehouse operator to:

- a. fail to deliver a written bill within 5 business days after arrival of the consumer's goods at the warehouse and at least bi-monthly thereafter for any goods and services for which the storage warehouse operator imposes a charge;
- b. collect or attempt to collect, without written consent from the consumer, any charge(s) not listed on the written estimate or the statement provided pursuant to §2323 where a written estimate has not been provided, except in accordance with §2326d. *infra*;
- c. consistently underestimate the total charges listed in §2-321 "Written estimate";
- d. increase the rate charged a consumer for monthly storage unless the consumer has been notified at least 45 days prior to the effective date of the rate increase.

7. Relocation of Household Goods.

- a. It is a deceptive practice for a storage warehouse operator or his authorized agent to move a consumer's goods from one location to another without informing the consumer of the reason for the move and the street address of the new location. Such notice must be given at least 30 days prior to the move unless there is an emergency necessitating immediate removal of the goods to another location. In that event, notice shall be made as soon as practicable.
- b. It is a deceptive practice for the storage warehouse operator to charge or attempt to charge the consumer any additional amount for transportation of the consumer's goods which has not been requested by the consumer, unless the storage warehouse shall have first given the consumer 45 days written notice of the amount of such charge prior to the date of such transportation.
- c. In the event that a storage warehouse operator has transported a consumer's goods after being placed in storage from one location to another, where such transportation has not been requested by the consumer, any transportation charges for redelivery of the property from storage shall be determined as if the goods were being delivered out of the first location in which they were placed in storage.

8. Advertisements.

- a. It is a deceptive practice for a storage warehouse operator to:
  - i. solicit storage of household goods in a name other than the name in which it is licensed by the Department of Consumer Affairs;
  - ii. fail to include its Department of Consumer Affairs license number in its advertisements soliciting storage of household goods;
  - iii. fail to include in display advertisements soliciting storage of household goods the name and address of each storage warehouse it operates in Nassau County where household goods are stored.
- b. It is a deceptive practice for any person who is not a licensed warehouse operator to advertise, represent in any manner, or claim to operate a storage warehouse.

9. Insurance.

It is a deceptive practice for the storage warehouse operator to:

- a. fail to provide without cost to the consumer legal liability coverage for loss or damage to the consumer's property caused by negligence, as defined in the UCC §7204. This coverage is to be provided at the minimum value of \$0.30 per pound per item up to \$2,000;
- b. fail to inform a consumer that (s)he may purchase through the storage warehouse operator additional coverage to cover specific items or all of the household goods at additional cost.

10. It is an unconscionable practice for a storage warehouse operator to accept a consumer's household goods for storage without entering into a written storage contract with the consumer.

10. It is an unconscionable practice for a storage warehouse operator to refuse a consumer access to his/her stored household goods to retrieve needed medication or documents which are necessary to enable the consumer to apply for social welfare benefits or employment; or to charge a consumer more than the scheduled rate for access, which shall be based upon the hourly warehouse labor charge or rate.

11. It is an unconscionable practice for a storage warehouse operator to relinquish possession of a consumer's stored goods upon the condition that the consumer sign a general release or any other document of similar import, in which the consumer releases the warehouse operator from legal liability for negligent loss or damage to the household goods stored as a condition for regular delivery by the warehouse operator of the goods in the ordinary course of business. Nothing in this section shall prohibit a warehouse operator from securing a general release or other document of similar import where a consumer's personal property in storage has been removed from storage for the purposes of conducting a public sale of such personal property pursuant to the provisions of §7-210 of the New York Uniform Commercial Code.

12. It is an unconscionable practice for a storage warehouse operator or his authorized agent to sell a consumer's stored goods in satisfaction of alleged charges owed by the consumer unless the consumer shall first be afforded notice and the opportunity for arbitration before the Commissioner on the issues of:

- a. nonpayment of the alleged charges owing; and
- b. the amount of such alleged charges.

This provision does not affect any other legal right that a consumer may have prior to sale of his/her stored goods.

13. Agents.

a. It is a deceptive practice for any person, firm or corporation to act as an agent for a licensed storage warehouse operator unless:

- i. his/her principal is a licensed storage warehouse operator who has complied with all the requirements of this title and any regulations promulgated by the Commissioner; and
- ii. the consumer is informed that an agent in his/her capacity as agent prior to rendering any service in connection with a household goods storage transaction; and
- iii. all documents furnished to consumers by such agent shall bear the name of the principal for which the agent is functioning, indicating that the agent is in fact an agent of said principal; and
- iv. there is on file with the Commissioner an agency agreement, executed by both the licensed warehouse operator, as principal, and a Department of Transportation (D.O.T.) certificated mover, as agent, which shall contain the following information:

- (a) the name in which the principal is licensed, and his license number;
- (b) the name of the agent and his D.O.T. license number;
- (c) an undertaking by the principal that he will guarantee full compliance by the agent with This title and any and all regulations promulgated thereunder;
- (d) the principal place of business and home addresses and telephone numbers of the principal and agent;
- (e) an undertaking by the principal that he will be responsible for the filing of an amended agency agreement in the event that any of the information required to be contained in the original agreement should become inaccurate.

b. A licensed warehouse operator who permits an agent to act on his behalf in providing any storage service shall be fully liable for any and all of the actions of such agent.

c. It is a deceptive trade practice for any licensed warehouse operator to enter into an agency arrangement with a person, firm or corporation where there is any common ownership between the agent and the licensed warehouse operator.

**§ 21-26.16. Severability**

If any clause, sentence, paragraph or part of this Title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

Section 2. The numbering of this title and the sections thereunder may be altered to ensure numerical consistency with the rest of the Administrative Code without the necessity for a vote to be taken by the County Legislature or by the members of any Standing Committee of said Legislature if this local law is passed by the affirmative vote of a majority of said Legislature.

Section 3. It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L. section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this ordinance is a "Type II" Action within the meaning of Section 617.5c. (20) and (27) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment; and no further review is required.

Section 4. This local law shall take effect January 1, 2013.

**APPROVED**

**County Executive**

**DATE**

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