

Submitted by the County Executive and Introduced By

LOCAL LAW NO. 21 - 2012

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE
IN RELATION TO LICENSING SECOND-HAND PRECIOUS METAL AND GEM
DEALERS

Passed by the Nassau County Legislature on November 19, 2012
Voting: ayes; 10 naves: 9 abstaines: 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-18

SECOND-HAND PRECIOUS METAL AND GEM DEALERS

Section	21-27.0	Legislative intent
	21-27.1	Definitions
	21-27.2	License required, Display, Signs and labeling
	21-27.3	Regulations
	21-27.4	Application for license; Fee; Bond; Insurance
	21-27.5	Issuance of License
	21-27.6	Expiration and Renewal of License
	21-27.7	Denial or Revocation of License; Appeals
	21-27.8	Non-Transferability of License
	21-27.9	Restrictions
	21-27.10	Record of Purchases and Sales
	21-27.11	Identity of Person from whom Purchase is Made

21-27.12	Lost or Stolen Property
21-27.13	Report to Law Enforcement Agencies
21-27.14	Duty to Enforce
21-27.15	Disclaimer of Liability
21-27.16	Penalties for offenses
21-27.17	Severability

§ 21-27.0. Legislative intent

This Legislature finds and determines that because of the increase in incidents of property theft, the increase in the price of precious metals and gems, and the ease with which some second-hand dealers buy and sell precious metals and gems without requiring identification or proof of ownership, that second-hand precious metal and gem dealers represent to persons involved in crime an opportunity to dispose of stolen property.

This Legislature further finds and determines that allowing second-hand precious metal and gem dealers to operate without laws to control and regulate the purchase of such articles jeopardizes the property rights of Nassau County residents and extremely hampers law enforcement agencies in their efforts to recover stolen property and identify suspects. In light of these issues, and to protect the public health, morals, and general welfare of the County, it is clear that legislation regulating second-hand precious metal and gem dealers is necessary.

§ 21-27.1. Definitions

1. Unless the context specifically indicates otherwise, the meaning of terms used in this Title shall be as follows:

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

b. "Dealer" means any person, corporation, partnership, association, LLC, joint-stock company, or other business entity, who, in any way, as a principal, broker or agent:

(i) deals in the purchase or sale at retail of any second-hand manufactured articles composed wholly or in part of: gems, gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals, or

(ii) deals in the purchase or sale at retail of second-hand: gems, gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals, or

(iii) deals in the purchase or sale at retail of articles composed wholly or in part of gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals, or

(iv) engages in melting precious metals for the purpose of selling at retail.

c. "Commissioner" means the Nassau County Commissioner of Consumer Affairs or his or her designated agent.

d. "Gems" means articles composed wholly or in part of the following: emerald, diamond, ruby, sapphire, black opal, ruby spinal, citrine, demantoid, bloodstone, jasper, pearl, aquamarine, beryl, topaz, garnet, chrysolite, fire opal, moonstone, rose quartz, tourmaline, carnelian, peridot, sardonyx, zircon, morganite, chrysoprase, kunzite, cat's eye, amethyst, chalcedony, onyx, agate, alexandrite, star sapphire, lapis lazuli, harlequin opal, turquoise, jade, cymophane, opal, smoky quartz, spinel, malachite, zircon, amber, jet, coral, tanzanite, or any other item composed wholly or in part of any gem or stone whose value is in excess of one hundred (\$100) dollars.

(i) The gems listed in section d above shall include such man-made gems approximating the naturally occurring gems in physical and chemical composition, not including those gems made of plastic or resin for use in costume jewelry or similarly non-valuable items.

e. "Precious Metals" means gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals or any compound composed in part of any one or more of said metals.

f. "Establishment" means any shop, establishment, place or premises where a person operates a business dealing in secondhand precious metals or gems.

2. Nothing contained in this Title shall be construed to apply to charitable not-for-profit organizations as defined by the laws of the State of New York.

3. This Title shall not apply to the acceptance of merchandise which is not secondhand as a return, exchange, or for credit or refund if such merchandise was originally purchased as new merchandise from the person accepting or receiving same, nor to the resale of such merchandise.

§ 21-27.2. License Required, Display, Signs and labeling

1. After January 1, 2013, no person shall, within the County of Nassau, establish, engage in or carry on, directly or indirectly, the business of dealing in secondhand precious metals or gems 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. The unit daily price of each type and class of precious metal shall be clearly displayed in Arabic numbers in such a manner that the public will be informed of said daily price.

4. Such license shall not in any way supplant the licensing and display requirements of any applicable Federal or State laws.

§ 21-27.3. Regulations.

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

§ 21-27.4. Application for License; Fee; Bond; Insurance

1. Applications for secondhand precious metal and gem dealer 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. Any applicants must maintain a bona fide establishment at a definite location within the State of New York. Any non-domestic corporation must submit a Certificate of Authority to do business in New York State.

c. 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.

d. 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.

e. 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.

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

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

h. 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.

i. 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.

j. All applicants for a license pursuant to this title will submit to fingerprinting of the individual owner, if the applicant is a sole proprietorship, the general partners if the applicant is a partnership, and the officers, principals, directors, and stockholders holding more than 5% of the outstanding stock if the applicant is a corporation. All individuals fingerprinted in connection with an application for a license shall be subject to a review of their criminal history record by the Commissioner of the Nassau County Office of Consumer Affairs, or his/her designee. All fingerprints and any applicable fees must be submitted in the form and manner as prescribed by Division of Criminal Justice Services ("DCJS"). Any decision regarding a prospective applicant's fitness for a license based upon a conviction contained in the criminal history background information obtained from the DCJS of any individual fingerprinted pursuant to this section must be made upon consideration of New York State Correction Law Sections 701-703-b and Sections 751-753.

2. Every application for a secondhand precious metal or gem dealer's license shall be accompanied by a non-refundable application fee of \$500 in the form of a certified check or postal money order payable to the County of Nassau for a two-year license.

3. Every applicant shall submit a bond or other surety to the County of Nassau in the sum of five thousand dollars (\$5,000.00), or for a renewal license, evidence of a bond issued in favor of the licensee. The bond shall be for the purpose of guaranteeing payments up to the face amount of the bond for bank drafts or other negotiable instruments issued by the licensee in exchange for the purchase of precious metals. All bonds must be conditioned so that the licensee will observe all laws in relation to secondhand precious metal and gems dealers and will conduct business in conformity thereto. Such bond shall remain in force during the entire period for which the license is valid

4. All applicants must furnish certificates of public liability and property damage insurance in the amount of one hundred thousand dollars (\$100,000) per person, three hundred thousand dollars (\$300,000) per occurrence, bodily injury and fifty thousand dollars (\$50,000) each occurrence and aggregate, property damage.

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

6. Every license issued hereunder shall be valid for the operation of one establishment. Licensees may request additional licenses to operate additional establishments from the Commissioner for a fee of one-hundred dollars per establishment.

§ 21-27.5. 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.

§ 21-27.6. 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.

§ 21-27.7. 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 secondhand dealer 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.

§ 21-27.8. 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).

§ 21-27.9. Restrictions

1. It shall be unlawful for a second-hand precious metal or gem dealer to purchase any second-hand precious metals or gems from any person whom such dealer knows to be or has reason to believe to be under the age of eighteen (18) years.
2. It shall be unlawful for any dealer in second-hand precious metals or gems to sell, dispose of, destroy, alter or remove from such dealer's premises any second-hand precious metal or gem until the expiration of fourteen (14) calendar days after the acquisition by such dealer of said precious metal or gem.
3. It shall be unlawful to cause, allow, or approve of the blockage, obstruction or concealment from the view of the consumer any scale, machine, weighing device, or part thereof, used to weigh or calculate the value of precious metals or gems. Only devices approved for use in trade by the New York State Department of Agriculture and Markets shall be lawful.
4. No weighing or measuring device shall be used in the purchase or sale of precious metals or gems within Nassau County without first notifying the Office of Consumer Affairs, of its intended use. This is to include new, used, repaired devices or devices which have been moved from the location where they were originally tested and sealed, either within or outside of the County of Nassau.
5. It shall be unlawful for any dealer of secondhand precious metals or gems to engage in buying activities in any place within Nassau County other than the place of business designated in such

license, except to meet with a customer at his home, bank or suitable place of business. A dealer in secondhand precious metals or gems may, upon application to the Commissioner and receiving approval of the Commissioner, extend his license to cover other locations, such as flea markets, fairs, bazaars, or religious or charitable organization functions.

6. It shall be unlawful for a secondhand precious metal or gem dealer to continue to carry on business after his license is suspended, revoked, or has expired and has not been renewed.

§ 21-27.10. Record of Purchases and Sales

1. Every dealer in secondhand precious metals or gems by the close of the business day shall keep a written and electronic record in machine-readable format in a form prescribed by the Commissioner of consecutively numbered transactions, legibly written in English, which shall contain a complete, thorough description of everything secondhand precious metal or gem article so purchased, utilizing accepted trade words and phrases such as, but not limited to, serpentine, herringbone, braided herringbone, rope, crosscut, woven link, cobra, basket weave, tricolor, Florentine, twist, beveled, gem names as listed, quantities of gems, number or numbers of said articles and any monograms, inscriptions or other marks of identification that may appear on such articles. The record shall also include the name, residence address and description of the person from whom such purchase was made, including the day and hour of the purchase. At the close of business on the day of purchase, the dealer in precious metals for gems shall forward to the Nassau County Police Department and the Nassau County Office of Consumer Affairs a record of purchase, as provided herein, of each transaction which had taken place on that day. The Nassau County Police Department shall act as the central repository for such records.

2. Such written records shall be legibly written in English, in a bound book and be kept on the business premises of the second-hand precious metal or gem dealership at all times during normal business hours. Such records shall be open to the inspection of any police officer, or the Commissioner, or any person duly authorized for such purpose by the Commissioner.

3. The dealer shall use only the forms and formats prescribed by the Commissioner and shall reimburse said Commissioner for the cost thereof.

§ 21-27.11. Identity of Person from whom Purchase is Made

1. It shall be the duty of every second-hand precious metal or gem dealer to verify the identity of every person from whom a purchase is made and to make and to keep a written and electronic record in machine-readable format of the nature of the evidence submitted by such person to prove identity. The signature of the dealer shall be included in the recording of each transaction.

2. Only the following shall be deemed acceptable evidence of identity: any official document, except a social security account number card, issued by the United States government, any state, county, municipality or subdivision thereof, any public agency or department thereof such as a Department of Motor Vehicles Driver License or Non-Driver Identification Card, or any public or private employer, which requires and bears the signature of the person to whom issued.

3. It shall be the duty of every dealer in second-hand precious metal or gem articles to require that every person from whom an article is purchased sign his/her name in the presence of the second-hand precious metal or gem dealer, and to compare the signature on the identifying document, if any, and retain on said premises the person's signature together with the number and description of the identifying document, if any.

§ 21-27.12. Lost or Stolen Property

If any articles composed wholly or in part of precious metals or gems shall be advertised in any newspaper printed in the County of Nassau or reported by any law enforcement agency as having been lost or stolen, and if any articles answering such description or any part thereof shall be or come into the possession of any licensed dealer, upon receiving actual written or oral notice of the similarity of the description of such articles, shall immediately give information relating thereto to the appropriate law enforcement agency. No disposition of such articles shall be effected until the authorization to do so shall be given to such dealer by said law enforcement agency. The failure of the law enforcement agency within 30 days to give the dealer further written notice that the articles are actually lost or are believed to be stolen and are needed in connection with a pending investigation or prosecution shall constitute authorization to dispose of said articles.

§ 21-27.13. Report to Law Enforcement Agencies

Every second-hand precious metal or gem dealer shall furnish to the appropriate law enforcement agency, all information requested by such agency relative to all records required to be kept under this Article.

§ 21-27.14. Duty to Enforce

It shall be the duty of the Commissioner or any police officer having jurisdiction at the site where a person is seen dealing in secondhand precious metals or gems to require such person seen so dealing and who is not known to the Commissioner or such police officer to be duly licensed to produce or display his secondhand precious metal dealer's license and to enforce the provisions of this chapter against any person found to be in violation of the same. It shall be the duty of the Commissioner or any police officer as described herein to require the immediate closure of any business dealing in the purchase of secondhand metals or gems as defined herein who is operating said business without a license as required by this Local Law.

§ 21-27.15. Disclaimer of Liability

This Article shall not create any liability on the part of the County of Nassau, its officers, agents, or employees, or any police officer for any act or damage caused as a result from reliance on this Article or any administrative decision lawfully made there under.

§ 21-27.16. Penalties for offenses

1. Notwithstanding any provisions to the contrary contained in this Chapter, 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 Article 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 Article 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.

§ 21-27.17. Severability

If any clause, sentence, paragraph or part of this Article 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

NOV 27 2012

DATE _____