

LOCAL LAW NO. 12 OF 2009

A LOCAL LAW REGULATING SECONDHAND PRECIOUS METAL OR GEM DEALERS FOR THE COUNTY OF ORANGE.

BE IT ENACTED, by the Orange County Legislature, as follows:

Section 1. Legislative intent.

It is hereby declared and found that, because of the increase of incidents of property theft, the increase of the price of precious metals and gems, the ease with which some secondhand dealers buy and sell precious metals or gems without requiring identification or proof of ownership, these secondhand precious metal or gem dealers represent to persons involved in crime an opportunity to dispose of stolen property. For business enterprises to be allowed to continue to operate without laws to control and regulate the purchase of such articles not only jeopardizes the property rights of many people but also extremely hampers the police agencies in their efforts to recover stolen property and identify suspects. If the law enforcement agencies are to function in this area, a local law regulating secondhand precious metal or gem dealers is necessary. Thereby, the public health, morals and general welfare of the County of Orange will be protected and promoted and the best interest of the people would be served by the control and regulation of secondhand precious metal or gem dealers. It is the intention of the Legislature of Orange County that this Local Law be established and shall constitute the complete law in relation to the control and regulation of secondhand precious metal or gem dealers for the County of Orange.

Section 2. Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this chapter shall be as follows:

Whenever used in this Local Law, the words "dealer in secondhand precious metals or gems" shall mean any person, corporation, partnership, association, joint-stock company, or other business entity, who, in any way or as a principal broker or agent:

1. Deals in the purchase or sale of secondhand metals or gems as defined herein; or
2. Accepts or receives secondhand precious metals or gems in exchange for credits on any other articles or merchandise; or
3. Deals in the purchase of secondhand precious metals or gems for the purpose of melting or refining; or
4. Engages in melting secondhand metal items for the purpose of selling; or
5. Engages in resetting secondhand precious gems for the purpose of selling; or
6. Deals in the purchase or sale of pawnbroker tickets or other evidence of pledged articles containing precious metals or gems; or
7. Not being a pawnbroker, deals in the redemption or sale of pledged articles made from precious metals or gems.

This Local Law 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.

The burden of proof that an article was originally purchased from the person accepting it or receiving it, that it was the first subsequent sale or exchange thereof to a person other than an ultimate consumer or that it was a first sale at retail of such factory rebuilt merchandise shall be upon the person asserting the same.

The term "gems" or "precious stones" as referred to herein shall include but is not limited to mean diamonds, alexandrite, cymophane, ruby, sapphire, opal, amethyst, smoky quartz, citrine, rose quartz, spinel, malachite, turquoise, emerald, aquamarine, morganite, garnet, lapis lazuli, jadeite, kunzite, topaz, tourmaline, zircon, amber, jet, pearl, coral, tanzanite.

The term "precious metals" as referred to herein shall mean gold, silver, platinum, iridium, ruthenium, osmium, or any alloys of any one or more of said metals.

Section 3. License required; display.

A. No person shall, within the County of Orange, 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 and having in full force and effect a license as provided herein.

B. Such license shall be displayed in a conspicuous place at the designated place of business of the licensee.

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

Section 4. Application for license; fee; bond.

A. Applications for secondhand precious metal and gem dealer licenses shall be made to the Commissioner of Consumer Affairs and Weights and Measures, [hereinafter the "Sealer"]. The application shall contain the following information:

1. Name and description of the applicant's business enterprise. Individuals operating under a trade name shall present a certified copy of the trade name certificate filed in the Orange County Clerk's office. A partnership conducting business, whether or not under a trade name, shall submit a certified copy of the partnership certificate which was filed in the Orange County Clerk's office when the partnership was formed. A corporation shall furnish a copy of its certificate of incorporation, as well as its certificate of Good Standing and, if a foreign corporation, its application for authority to do business in New York State.

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

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

4. 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 the use of said premises.

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

6. 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.

7. 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.

8. All applicants must submit fingerprints 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. Fingerprints will be submitted to the Division of Criminal Justice Services for a criminal background check. The Sealer shall secure from the applicant the required fee for said background check in the form of a check or money order made payable to the New York State Department of Criminal Justice Services.

B. Such application for a secondhand precious metal or gem dealer's license shall be accompanied by a non-refundable application fee of \$200.

C. Every applicant shall submit a bond or other surety to the County of Orange in the sum of Two Thousand Dollars (\$2,000), 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. The Sealer may establish rules and regulations concerning the amount of a bond to be posted, upon proper notice to the licensee.

Section 5. Issuance of license

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

B. The Sealer shall keep a record of all licenses issued, as well as any other matters herein described.

Section 6. Expiration and renewal of license

Every license shall expire one year after its issuance. Every license may be renewed upon payment of the required renewal fee in the amount of \$100.00 and filing a renewal application with the Sealer 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 fact 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.

Section 7. Denial or revocation of license; appeals

A. 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 or Sealer], 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 Local Law, 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.

B. 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.

C. 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.

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

E. Within 60 days of the initial determination to deny or revoke a license under paragraphs A through D 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. See Section 18.06 of the Orange County Administrative Code. 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 days of the date of 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.

Any further appeal shall be to the court of this state with appropriate jurisdiction.

Section 8. Non-transferability of license.

No license under the provisions of this chapter shall be transferred or assigned to any person or used by any person other than the licensee to whom it was issued, his agents, employees or duly authorized representatives, said agents, employees or duly authorized representatives having been approved by the Sealer.

Section 9. Restrictions.

A. It shall be unlawful for any dealer of secondhand precious metals or gems to engage in buying activities in any place within Orange 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 Sealer and receiving approval of the Sealer, temporarily extend his license to cover other locations, such as flea markets, fairs, bazaars or religious or charitable organization functions.

B. It shall be unlawful for any dealer of secondhand precious metals or gems to purchase any secondhand precious metals or gems from any person whom he knows to be, or has reason to believe to be, under the age of 18 years.

C. It shall be unlawful for a secondhand precious metal or gem dealer to purchase secondhand precious metals or gems from any person between the hours of 10:00 p.m. and 6:00 a.m.

D. It shall be unlawful for any dealer in secondhand precious metals or gems to sell or dispose of any secondhand precious metals or gems until the expiration of 15 days after the acquisition by such dealer of said precious metals or gems.

E. 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.

F. 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.

G. It shall be unlawful for any dealer of secondhand precious metals or gems to damage, destroy, alter or in any way change or direct or request anyone else to alter or change the structure or makeup of a precious metal or gem so as to make it unidentifiable within 15 days after the acquisition by said dealers of such precious metal or gem. In the event that said precious metal or gem dealer damages, destroys, alters or in any way changes the precious metal or gem, the secondhand precious metal or gem dealer shall restore the precious metal or gem to its original condition as much as is possible, provided that the secondhand precious metal or gem dealer receives a written request to do so from the owner of said item and law enforcement agency within the time limits set forth in this Subsection G.

Section 10. Display of daily price required.

The price upon which the dealer bases his quotation for gold and silver shall be clearly and conspicuously displayed in Arabic numbers in such a manner that the public will be informed.

Section 11. 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 Orange 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, such dealer, upon receiving actual written or oral notice of the similarity of 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 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.

Section 12. Records.

A. Every dealer in secondhand precious metals or gems by the close of the business day shall keep a written record in triplicate and on a form prescribed by the Sealer of consecutively numbered transactions, legibly written in English, which shall contain a complete, thorough description of every 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. Within 48 hours of the close of business on the day of purchase, the dealer in precious metals or gems shall forward by mail, to the Orange County Sheriff's Office and municipal police department within whose jurisdiction the dealer's business is located a copy of the record of purchase, as provided herein, of each transaction which had taken place on that day. The Orange County Sheriff's Office shall act as the central repository for such records.

B. Such record shall be kept on the business premises of the secondhand precious metal or gem dealership or at the place designated on the fully approved license, at all times during normal business hours. Such record shall be open to the inspection of any police officer or the Sealer or any person duly authorized for such purposes by the Sealer.

C. The dealer is mandated to use the forms prescribed by the Sealer and shall reimburse the Sealer for the cost of said forms.

D. The Dealer must include a digital picture or a photo copy of the items purchased along with a brief description of the items purchased, including any identifying marks or engravings.

Section 13. Identity of person from who purchase is made.

A. It shall be the duty of every secondhand precious metal or gem dealer to verify the identity of every person from whom he makes a purchase and to make and keep a written record of the nature of the evidence submitted by such person to prove his identity and attach a copy of the identification taken to the reporting form.

B. Only the following shall be deemed acceptable evidence of identity:

1. 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 or any public or private employer, which requires and bears signature of the person to whom issued.

2. Other identification documentation which, under the circumstances of any particular purchase, would lead a reasonable person to believe to be accurate and reliable, when identification under Subsection B (1) is not available.

C. It shall be the duty of every dealer in secondhand precious metal or gem articles to require that every person from whom an article is purchased sign his or her name in the presence of the secondhand 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.

Section 14. Reporting of records information.

Every secondhand precious metal or gem dealer shall furnish to the Sealer or his agent or the appropriate law enforcement agency all information requested relative to all records required to be kept under this chapter.

Section 15. Duty to enforce.

It shall be the duty of the Sealer 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 Sealer 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 Sealer 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.

Section 16. Disclaimer of liability.

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

Section 17. Penalties

A. Failure to comply with any provision of this law shall constitute a Class A misdemeanor and shall be subject to any sentence authorized under the Penal Law of the State of New York.

B. In addition to the penalties provided in paragraph A above, any offense against the provisions of this Local Law shall subject the person or business entity committing the offense to civil penalties, not to exceed \$500 for each day that the offense shall continue. Any such penalty shall be collectible by and in the name of the County of Orange.

Section 18. Effective Date

This Local Law shall take effect upon filing in the Office of the Secretary of State as provided by Section 27 of the Municipal Home Rule Law.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

August 12, 2009

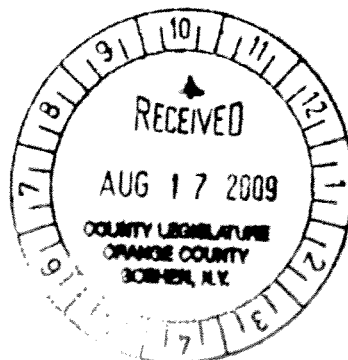
Laurie M Whightsil
Clerk Orange County Legislature
County Government Center
255 Main Street
Goshen NY 10924-1627

RE: County of Orange, Local Law No. 12, 2009, filed on August 10, 2009

Dear Sir/Madam:

The above referenced material was received and filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.state.ny.us/corp/misc.html.

Sincerely,
Linda Lasch
Principal Clerk
State Records and Law Bureau
(518) 474-2755



LOCAL LAW NO. 1 OF 2011

A LOCAL LAW AMENDING LOCAL LAW NO. 12 OF 2009, A LOCAL LAW REGULATING SECONDHAND PRECIOUS METAL OR GEM DEALERS FOR THE COUNTY OF ORANGE.

BE IT ENACTED, by the County Legislature of the County of Orange, State of New York, as follows:

SECTION 1. PURPOSE

The purpose of this Local Law is to add further specificity to the provisions of Local Law No. 12 of 2009 in order to comply with requirements of the New York State Division of Criminal Justice Services. This amendment shall identify the title of the individual that will be reviewing the criminal history record information provided to the County of Orange by the New York State Division of Criminal Justice Services pursuant to Local Law No. 12 of 2009. This amendment shall also specify the manner in which fingerprints shall be submitted to the New York State Division of Criminal Justice Services.

SECTION 2. AMENDMENTS

A. Local Law No. 12 of the Year 2009, a local law regulating secondhand precious metal or gem dealers for the County of Orange, be and hereby is amended as follows:

- (i) by amending and restating Section 5, entitled "Issuance of license," sub-section "A," to read as follows:

A. Upon receipt of the license application, criminal history record information received from the New York State Division of Criminal Justice Services (DCJS), fees, and bonds required of the applicant, the Sealer shall review the application and, if appropriate, issue a license to the applicant.

- (ii) By amending and restating Section 4, entitled "Application for license; fee; bond," subsection "8," to read as follows:

8. All applicants must submit fingerprints 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. Fingerprints will be submitted in electronic form to the Division of Criminal Justice Services for a criminal background check. The Sealer shall secure from the applicant the required fee for said background check in the form of a check or money order made payable to the New York State Department of Criminal Justice Services.

SECTION 3. EFFECTIVE DATE

This Local Law amending Local Law No. 12 of 2009 shall take effect in the manner provided in the Municipal Home Rule Law and upon completion of the requisite filings and procedures.



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

ANDREW M. CUOMO
GOVERNOR

RUTH NOEMÍ COLÓN
ACTING SECRETARY OF STATE

January 7, 2011

Laurie M Whightsil
Clerk
County Government Center
255 Main Street
Goshen NY 10924-1627

RE: County of Orange, Local Law 1 2011, filed on January 7, 2011

Dear Sir/Madam:

The above referenced material was filed by this office as indicated. Additional local law filing forms can be obtained from our website, www.dos.state.ny.us.

Sincerely,
State Records and Law Bureau
(518) 474-2755

