

Submitted by the County Executive and Introduced By

LOCAL LAW NO. 15 - 2012

A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE
IN RELATION TO LICENSING SCRAP METAL PROCESSORS, VEHICLE
DISMANTLERS AND JUNK DEALERS

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-20

SCRAP METAL PROCESSORS, VEHICLE DISMANTLERS AND JUNK DEALERS

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§ 21-29.0. Legislative intent.

This Legislature finds and determines that the increase in market value of scrap metal potentially induces the theft of ferrous and nonferrous metal, end-of-life vehicles and catalytic converters. Therefore, the purpose of this chapter is to require additional record-keeping requirements for scrap metal processors, auto dismantlers, junk dealers, core buyers, and entities operating as such, and to establish significant penalties for the violation of the provisions enacted hereunder.

§ 21-29.1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

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

“Core buyer” means a person, association, partnership, corporation of an itinerant nature or other entity which is engaged in the business of purchasing and/or acquiring catalytic converters, automobile radiators, batteries and other small-component motor vehicle parts for resale as such.

“End-of-life vehicle” means any motor vehicle sold, given, or otherwise disposed of as junk or salvage.

“Government-issued photo identification” means a valid federal, state or local government-issued identification card bearing a current photograph of the card's holder. Examples include a driver's license, passport, military identification or resident alien card.

“Junk dealer” means any person, association, partnership, corporation or other entity engaged in the business of purchasing or selling old metal and/or core motor vehicle parts such as catalytic converters, radiators, batteries and such.

“Law enforcement officer” means the Commissioner of the Nassau County Police Department, his or her designee, the chief of any town or village police department within the County of Nassau, his or her designee, or any officer of such police department.

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

“Purchaser” means a scrap metal processor, vehicle dismantler, junk dealer, core buyer and/or a person, association, partnership, corporation or other entity who or which purchases or contracts to purchase ferrous and nonferrous scrap metal, end-of-life vehicles and catalytic converters, including any such person or entity who or which does not maintain a fixed place of business in the County of Nassau but enters into the County of Nassau to purchase scrap metal.

“Scrap metal” means ferrous and nonferrous metal, including but not limited to copper, aluminum, bronze, brass, tin and metals commonly purchased for reprocessing, and material which is or may have been a vehicle or vehicle part purchased for processing into a form other

than a vehicle or vehicle part.

“Scrap metal processor” means a person, association, partnership, LLC, corporation or other entity engaged primarily in the purchase, processing and shipment of ferrous and/or nonferrous scrap, the end product of which is the production of raw material for remelting purposes for steel mills, foundries, smelters, refiners, and similar users, or who or which purchases material which is or may have been a vehicle or vehicle part for processing into a form other than a vehicle or vehicle part, but who or which, except as otherwise provided by regulation of the Commissioner of Motor Vehicles, does not sell any such material as a motor vehicle, a trailer or a major component part thereof.

“Seller” means a person, association, partnership, corporation or other entity who or which sells or contracts to sell scrap metal, end-of-life vehicles and catalytic converters.

“Vehicle dismantler” means a person, association, partnership, corporation or other entity who or which is engaged in the business of purchasing and/or acquiring motor vehicles or trailers for the purpose of dismantling the same for parts or reselling such vehicles as scrap.

§ 21-29.2. 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 purchasing ferrous and nonferrous scrap metal, end-of-life vehicles or catalytic converters, 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 of scrap 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.

§ 21-29.3. Regulations.

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

§ 21-29.4. Application for License; Fee; Bond

1. Applications for scrap metal, end-of-life vehicle and catalytic converter purchaser 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.

i. 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. Such application for a scrap metal, end-of-life vehicle and catalytic converter purchaser's license shall be accompanied by a non-refundable application fee of \$500 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.

§ 21-29.5. 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.

§ 21-29.6. 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.

§ 21-29.7. 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.

§ 21-29.8. 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).

§ 21-29.9. Restrictions

1. 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 ferrous or nonferrous scrap metal, end-of-life vehicles or catalytic converters. Only devices approved for use in trade by the New York State Department of Agriculture and Markets shall be lawful.

2. No weighing or measuring device shall be used in the purchase of ferrous or nonferrous scrap metal, end-of-life vehicles or catalytic converters 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.

§ 21-29.10. Recordkeeping requirements.

1. All purchasers of ferrous and nonferrous scrap metal, end-of-life vehicles and catalytic converters shall create a record for each such purchase which shall include a copy of the seller's government-issued photographic identification; provided, however, that such seller is a natural person; the date of purchase; the name of the seller; the residence or business address of the seller; and the type, quantity and consideration paid for the items so purchased.

2. When ferrous and nonferrous scrap metal is purchased, the record shall detail the type and quantity of the scrap metal so purchased as described by industry standards, as defined by the Institute of Scrap Recycling Industries (ISRI).

3. When an end-of-life vehicle is purchased, the record shall detail the year, make, model, color and VIN number of the vehicle so purchased.

4. When a catalytic converter is purchased, the record shall detail the quantity by piece count, and the type shall be described as "catalytic converter."

§ 21-29.11. Transaction receipt requirements.

1. No alterations or erasures are to be made to any record or receipt of sale.

2. All records of transactions shall be kept in an electronically searchable database.

3. Records and receipts shall be stored in receipt number order in good and legible condition in a secure volume subdivided by year and month for no less than three years as measured from the date of the receipt. Each volume of article transaction receipts shall be kept at the business establishment of the scrap processor. Such records shall be archived electronically in lieu of other formats.

§ 21-29.12. Inspection of records and books.

1. All records and books described herein shall, at all reasonable times, be open for inspection by the Commissioner, his or her designee, or a law enforcement officer.

2. The Commissioner, his or her designee, or a law enforcement officer may request, and a purchaser shall satisfy such request within 72 hours of receiving such request, information as to copies of all purchase receipts and/or a comparable document detailing purchase information for one specific seller(s) for a time frame of no more than 90 days.

3. Should the Commissioner, his or her designee, or law enforcement officer request information for one specific seller for a time frame greater than 90 days, then the purchaser shall have an additional 72 hours to comply with the request.

§ 21-29.13. Order to hold property.

1. Upon a showing that probable cause exists that a crime relating to the theft of ferrous or nonferrous scrap metal, end-of-life vehicles, or catalytic converters has occurred, the District Attorney may seek and obtain a judicial order for service upon a purchaser, ordering said purchaser to hold such for purposes of an investigation.

2. Such request for an order to hold shall specify with particularity the ferrous or nonferrous scrap metal, end-of-life vehicle or catalytic converters subject to such order to hold. In the event such order is issued, said purchaser shall not sell or remove from the business establishment the purchased item(s) which is the subject of the order. The order shall remain in effect for a period not to exceed five days from the date of issuance of the order.

§ 21-29.14. 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 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.

§ 21-29.15. Injunctive relief.

The County Attorney or the District Attorney may commence an action in a court of competent jurisdiction to enjoin any violation of this chapter or any rule or regulation promulgated hereunder.

§ 21-29.16. 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.

§ 21-29.17. Applicability.

The requirement of section 21-29.10 of this title regarding the maintenance of records of transactions in an electronically searchable database shall apply one year after the effective date of this title.

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 617.5(c)(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

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DATE _____