

TO: HONORABLE BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee has reviewed "A LOCAL LAW repealing Chapter 863 of the Laws of Westchester County and enacting a new Chapter 863 relating to the control and regulation of secondhand precious metal and gem dealers." Your Committee has recently determined that Article XI of Section 863, commonly known as control and regulation of secondhand precious metal and gems dealers, was first introduced in 1980, but has not been amended since 1985. The original intent of the law was to protect property rights and reduce criminal activity. Such intent remains unchanged today, however changes in technology and trends in law enforcement have created a need for an updated law.

The Department of Public Safety, in collaboration with the Office of Weights and Measures-Consumer Protection, has identified trends that, if addressed, could help continue to make Westchester County safe for all residents and ensure a legitimate marketplace for consumers to purchase secondhand precious metals and gems. It is the intent of this Local Law to regulate these commercial outlets by requiring dealers to register their businesses and keep electronic records of transactions. These requirements would assist in the recovery of stolen items, the detection and apprehensions of persons involved in various crimes and discourage secondhand dealers from accepting property they suspect to be stolen; thereby greatly reducing the market for stolen goods.

Your Committee has been made keenly aware of the rising and deadly heroin and prescription drug epidemic that has crippled not only the nation. Crime indexes reflect increases in thefts coinciding with the onset of the opioid epidemic. By providing an easy route for opportunists to cash in on stolen metal and merchandise, these enterprises have helped spawn an endless cycle of theft that law enforcement cannot keep pace with absent a legislative response from the County. Since secondhand dealers are often used to dispose of stolen goods, there must be controls and

regulations placed on the purchase of such items in order to protect property rights for the residents of this County.

Your Committee finds that in order to improve the effectiveness of the existing Article XI of the Westchester County Charter, a new law with enhanced licensing, electronic reporting and record retention are critical to that goal. The implementation of these new legislative provisions will enhance the ability to track and recover stolen items by law enforcement. Moreover, updating the law will help ensure that consumers have confidence that they are buying legitimately obtained precious metals and gems.

As you know, this Honorable Board must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"). Your Committee is advised that the Department of Planning has reviewed the applicable SEQRA regulations, and has concluded that this proposed Local Law is not an action which requires any environmental review. Your Committee concurs with that conclusion.

Your Committee, after careful consideration, recommends the adoption of this Local Law.

Dated: _____, 2019

White Plains, New York

Resolution No. -2019

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No.- 2019, entitled "A LOCAL LAW repealing Chapter 863 of the Laws of Westchester County and enacting a new Chapter 863 relating to the control and regulation of secondhand precious metal and gem dealers." The public hearing will be held at ____m. on the _____day of ____, 2019 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

LOCAL LAW INTRO. NO. - 2019

A LOCAL LAW repealing Chapter 863 of the Laws of Westchester County and enacting a new Chapter 863 relating to the control and regulation of secondhand precious metal and gem dealers.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. Article XI of Chapter 863 of the Laws of Westchester County is hereby repealed and a new Article XI of Chapter 863 is hereby created to read as follows:

Sec. 863.241. - Legislative findings.

1. It is hereby declared and found that because of the increase of incidences 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 and gems, without requiring identification or proof of ownership, these secondhand precious metal and 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 items not only jeopardizes the property rights of many people, but also hampers the police agencies in their efforts to recover stolen property and identify suspects. If the law enforcement agencies are to function effectively in this area, a local law regulating secondhand precious metal and gem dealers is necessary. The public health, morals and general welfare of the County of Westchester will then be protected and promoted, and the best interests of the people will be served by control and regulation of secondhand precious metal and gem dealers.
2. Furthermore, the establishment of a licensing and revised reporting system to monitor and track the transactions set forth in this article is necessary in order to achieve the protection and best interests of the residents of Westchester County. This requirement is both reasonable and appropriate for all secondhand precious metals and gem dealers subject to such regulation.

Sec. 863.242. - Definitions.

1. Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:
 - a. "Dealers in secondhand precious metals and gems" shall mean any person who, in any way, as principal broker or agent:

- i. Deals in the purchase or sale at retail of any secondhand manufactured items composed wholly or in part of precious metals or gems;
 - ii. Deals in the purchase or sale at retail of secondhand gems or precious metals;
 - iii. Deals in the purchase or sale at retail of items composed wholly or in part of precious metals or gems for the purpose of melting or refining; or
 - iv. Engages in melting precious metals for the purpose of selling at retail.
- b. “Gems” shall mean items 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 or any other item composed wholly or in part of any gem or stone whose value is in excess of one hundred dollars (\$100.00).
 - c. “Licensee” shall mean a person licensed to engage as a dealer in secondhand precious metals and gems under the provisions of this article.
 - d. “Persons” as used herein shall mean and include natural persons, corporations, partnerships, associations, joint-stock companies and all other entities of any kind capable of being sued.
 - e. “Precious Metals” shall mean items composed wholly or in part of gold, silver, platinum or titanium.

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

Section 863.243 - License required.

No person shall conduct, operate or engage as a dealer in secondhand precious metals and gems within the County of Westchester or hold themselves out as being able to do so, unless such person is licensed pursuant to this article.

Section 863.244 - Application for license or renewal; fee required.

1. An application for a license to be a dealer in secondhand precious metals and gems shall be made by the owner, or operator if different from the owner, on forms provided by and filed with the Office of the Sealer (hereinafter referred to in this article as the “Office”). The application shall contain the following information:
 - a. 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 with the New York State Department of State. 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 New York State

Department of State'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;

- b. The applicant's legal address and address of all places of business within Westchester County and the name and address of a designated agent for service of process;
- c. A description of the nature of the business to be conducted and/or being conducted by the applicant in Westchester County;
- 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 the use of said premises;
- e. A statement that the applicant is at least eighteen (18) years of age; and
- f. A statement as to whether or not the applicant has, within the past five (5) years, been convicted of a crime, 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.

2. Such application for a license shall be accompanied by a non-refundable application fee of \$250.00. If a license hereunder shall be lost, stolen, or destroyed; a duplicate may be issued by the Office upon; (a) the filing of an affidavit satisfactorily explaining the facts of such loss or theft; and (b) the payment of a \$50.00 fee for each duplicate copy.

3. The process to obtain a duplicate license for an additional establishment owned or operated by the applicant shall be the same as described in subsections 1 and 2 of this section.

4. Licenses shall expire annually after the date of issuance. Every license may be renewed upon payment of the required renewal fee in the amount of \$200.00, and filing a renewal application with the Office no earlier than 60 days, and no later than 15 days before the license is due to expire.

Section 863.245 - Issuance, denial, suspension or revocation of license.

1. Within 90 days after receipt of a complete application in proper form, the Office shall grant or deny a license or renewal thereof under this article.

2. The Office may deny, suspend or revoke the license for any of the following reasons:

- a. Fraud, misrepresentation or false statements in the application for license;

b. Fraud, misrepresentation or false statements made in the course of carrying on the licensed business;

c. Any violation of this article; or

d. Conviction of a crime by the applicant that involves theft, larceny, burglary, robbery, possession of stolen property or any offense involving fraud as defined in Article 170 of the Penal Law.

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

4. Within 3 days of the initial determination to deny, suspend, or revoke a license under this section, the Office shall send a letter to the applicant notifying him or her of the determination. Within 30 days thereafter, the applicant or licensee shall be entitled to a formal hearing before the Office by making a written demand thereof. Such request for a formal hearing shall be addressed via certified mail to the Office. Within 10 days after the request is sent, the Office shall appoint a 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 by the Office in a letter of the hearing date and his or her right to be represented by counsel at said hearing. The hearing officer shall render his or her recommendation to the Office within 30 days of the date of the hearing. The Office will then notify the applicant or licensee within 10 days thereafter of its final determination with respect to the disposition of his or her application for a license. The determination made by the Office shall be subject to judicial review in accordance with Article 78 of the Civil Practice Law and Rules in a proceeding brought within four months after the determination is rendered.

Section 863.246 - License assignment.

Any license issued by the Office under this article shall not be assigned or transferred by the licensee and shall be surrendered back to the Office within 30 days after the licensee discontinues the licensed business.

Sec. 863.247. – Restrictions on licensee.

1. It shall be unlawful for a licensee to purchase any secondhand precious metals or gems from any person whom such licensee knows to be or has reason to believe to be under the age of 18 years.

2. It shall be unlawful for any licensee to sell, dispose of, destroy, alter or remove from such licensee's premises any secondhand precious metal or gem until the expiration of 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 Westchester County without first notifying the Office of its intended use. This provision includes 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 Westchester.

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

Sec. 863.248 - Display of prices and license.

1. 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 can view it at all times during business hours. Additional postings may be required as approved by the Office.
2. The license issued pursuant to this article shall be clearly displayed in such a manner that the public can view it at all times during business hours.

Sec. 863.249 - Lost or stolen property.

If any items composed wholly or in part of precious metals or gems shall be advertised in any newspaper printed in the County of Westchester as having been lost or stolen, and if any articles answering such advertised description or any part thereof shall be in or come into the possession of any licensee upon receiving written or oral notice of the similarity of description of such articles, such licensee shall immediately provide information relating thereto to the appropriate law enforcement agency. No disposition of such items shall be effected until authorization to do so shall be given to such licensee by the appropriate law enforcement agency.

Sec. 863.250. - Report to law enforcement agency.

Every licensee 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.

Sec. 863.251- Release of stolen property.

1. Every licensee shall release to the appropriate law enforcement agency any item in the licensee's possession if:
 - a. The item is established to be stolen;

- b. The owner of the item, victim of the theft or someone with firsthand knowledge of the item has positively identified the item and provided an affidavit of ownership and made a report of the theft to a law enforcement agency;
 - c. The stolen property report describes the item by one or more of the following: date, initials, an insurance record, a photograph, a sales receipt, a serial number, specific damage, a statement of facts that show the item is one of a kind or a unique engraving; and
 - d. The licensee is provided with a receipt by law enforcement for the item released.
2. The appropriate law enforcement agency shall maintain possession of said stolen item until such time the item is not deemed necessary for prosecution by the prosecuting agency at which time the item shall be returned to the owner.

Sec. 863.252 - Record of purchases and sales.

1. Every licensee shall maintain records in a form prescribed by the Office of consecutively numbered transactions. Such records shall be legible in English and made at the time of every purchase or sale and shall include:
- a. A detailed and accurate description of the item including any identifying marks;
 - b. Serial number and model number of said item (if any);
 - c. Amount paid, advanced or loaned for the item; and
 - d. The date, time and place of the transaction.
2. Such transaction records shall be kept on the business premises of the secondhand precious metal or gem dealership at all times during normal business hours. Such transaction records shall be open to the inspection of any police officer, or the Office, or any person duly authorized for such purpose by the Office.

Sec. 863.253 – Daily electronic reporting.

1. Except as otherwise provided herein, every licensee shall prepare an electronic report of each transaction made using a computer program approved by the Office. Each electronic record shall include:
- a. A detailed and accurate description of the item including any identifying marks;
 - b. Serial number and model number of said item (if any);
 - c. Amount paid, advanced or loaned for the item;
 - d. The date, time and place of the transaction; and
 - e. A photograph of the item.
2. At the close of each business day, using a computer program approved by the Office and the Department of Public Safety, every licensee shall submit electronically to the Office the report of each secondhand precious metal or gem transaction made that day. Every licensee

shall upload the electronic record of the transaction via internet connection to an electronic reporting service according to the following procedures:

a. Using point of sale software, all licensees covered by this article shall review the compatibility of their software with the electronic reporting service used by the Office Licensees with compliant point of sale software shall electronically upload all required information from their point of sale software to the specified electronic reporting service via internet connection using the upload process or reporting service; or

b. All licensees covered by this article and using point of sale software that is noncompliant with that utilized by the Office, or not using point of sale software, shall manually enter all reportable transactions into the electronic reporting service via an internet connection.

c. In the event that any licensee covered by this chapter is unable to successfully upload transaction records via the electronic reporting service, the licensee shall, within 24 hours of the unsuccessful upload, notify the Office of the reason for the submission failure. Under these circumstances, the licensee shall provide the Office with a daily electronic data table or spreadsheet of all transactions that would otherwise have been submitted via the electronic reporting service. This data shall either be hand delivered or e-mailed no later than one business day after the transaction date.

Sec. 863.254. - Identity of person from whom purchase is made.

1. It shall be the duty of every licensee to verify the identity of every person from whom a purchase is made and to make and to keep a written or electronic record of the nature of the evidence submitted by such person to prove identity. The signature of the licensee 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 or any public or private employer, which requires and bears signature of the person to whom issued.

3. It shall be the duty of every licensee to require that every person from whom an is purchased sign his or her name in the presence of the licensee 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.

Sec. 863.256. - Record retention.

Every licensee shall maintain for a period of five years all of the information required by Sections 863.252 and 863.253 of this article. Electronic records may be used to satisfy the

requirements set forth herein, provided such records include all the required information and are available upon request in printed format.

Sec. 863.257. - Duty to enforce.

It shall be the duty of any peace officer employed by the Office or law enforcement officer, having jurisdiction where a person is seen dealing in secondhand precious metals or gems to enforce the provisions of this article against any person found to be in violation of the same.

Sec. 863.258. - Disclaimer of liability.

This article shall not create any liability on the part of the County of Westchester, 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 thereunder.

Sec. 863.259 - Penalties for offenses.

1. Notwithstanding any provisions to the contrary contained in this chapter, the Westchester County Charter, the Westchester 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 \$1,000 or imprisonment for a period not exceeding 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. A second violation of any provisions of this article shall constitute an unclassified misdemeanor and shall be punishable by a fine not exceeding \$5,000.00 or imprisonment for a period not to exceed one year, or by both such fine and imprisonment;

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 \$1,000.00 for each day that the offense shall continue, collectible by and in the name of the County of Westchester.

Sec. 863.260 - 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. This local law shall take effect in sixty days.

