

LOCAL LAW NO. 10 2004

A LOCAL LAW to amend chapter 272 of the laws of 1938, constituting the Nassau County Administrative Code, in relation to the seizure and forfeiture of vehicles operated by unlicensed home improvement contractors

Passed by the Nassau County Legislature on September 27, 2004
Voting: ayes: 18, nays: 0, abstained: 0

Became a law on September 30, 2004 with the approval of the Chief Deputy County Executive.

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

Section 1. Legislative Intent. The Legislature hereby finds that it is of great importance to the protection of Nassau County homeowners to institute measures to enhance the County's ability to enforce the provisions of the Administrative Code that prohibit home improvement contractors from operating without a license from the County. Through its licensing requirements, the Office of Consumer Affairs tries to provide that persons working on the homes of Nassau County residents are of good character, financially responsible and will work with them and the Office of Consumer Affairs to resolve complaints. Licensed contractors contribute, pursuant to Administrative Code §21-11.16, to the Home Improvement Restitution Fund, which compensates homeowners when contractors cannot pay judgments or awards adjudicated against them.

The Legislature finds further that many home improvement contractors in Nassau County have continued to operate without licenses, or with licenses that have lapsed or have been suspended or revoked, leaving homeowners without the protections afforded by the County's licensing requirements. The Legislature finds, therefore, that the licensing requirements of the Administrative Code will be strengthened by providing for the seizure of vehicles used by home improvement contractors for unlicensed activities and the forfeiture of such vehicles when a home improvement contractor refuses to apply for a license or repeatedly violates the licensing requirements.

§2. Subdivision 3 of section 21-11.1 of chapter 272 of the laws of 1938, constituting the Nassau County Administrative Code, as amended by local law number 2 of 2002, is amended to read as follows:

3. "Home Improvement" means repair, maintenance, replacement, remodeling, alteration, conversion, modernization, or addition to any land or building, or that portion thereof, which is used as a private residence or dwelling place for not more than three families, and other improvements to structures or upon land which is adjacent to a dwelling, and shall include, but not be limited to, the installation, construction, replacement or improvement of driveways, swimming pools, porches, garages, sheds, central heating or air conditioning systems, vacuum cleaning systems, windows and awnings, sandblasting, power washing, waterproofing, floor refinishing, chimney cleaning, interior and/or exterior painting, carpet installation, and gardening/landscaping, when the gardener/landscaper uses his/her own equipment in the conduct of his/her business and uses his/her vehicle to transport such equipment. "Home Improvement" shall not include (a) the construction of a new home building or work done by a

contractor in compliance with a guarantee of completion of a new building project, or (b) the sale of goods or materials by a seller who neither arranges, to perform nor persons directly or indirectly any work or labor in connection with the installation of goods or materials, or (c) decorating when not incidental or related to home improvement work as herein defined, or (d) residences owned by, the state or any municipal subdivision thereof, or (e) automatic fire alarm systems, or (f) burglar alarm systems.

§2. A new section 21-11.15-a is added to such code, to read as follows:

a. A police officer or authorized officer, employee or agent of the office of consumer affairs or the sheriff's department may, upon service on the operator of a vehicle of a notice of violation for operating without a license required by section 21-11.2 of this title, seize and impound any vehicle, tool or other implement which such officer has reasonable cause to believe is being used in connection with such violation. Any vehicle, tool or implement seized pursuant to this section shall be delivered into the custody of the office of consumer affairs.

(i). A person from whom a vehicle has been seized and impounded pursuant to this section shall receive notice at the time of such seizure and by certified mail, return receipt requested, as soon thereafter as practical informing such person how and when the vehicle may be reclaimed and whether the vehicle is subject to a civil forfeiture proceeding pursuant to subdivision e of this section. In the event that the person from whom the vehicle was seized is not the registered owner of the vehicle, separate notice shall be provided by certified mail, return receipt requested, to the registered owner of the vehicle. Notice shall also be provided to any lienholder. For purposes of this section, the term

“lienholder” shall, in the case of a vehicle, mean any person, corporation, partnership, firm, agency, association or other entity who at the time of an seizure pursuant to this section has a financial interest recorded as a lien with the department of motor vehicles of New York state or any other state, territory, district, province, nation or other jurisdiction, except that “lienholder” shall not mean an entity that leases vehicles pursuant to a written agreement subject to the New York state personal property law or the uniform commercial code. Nothing in this provision shall be construed to prevent a lienholder whose lien is not so recorded from intervening in any action or proceeding under this section.

(ii) The commissioner or the designee of the commissioner shall hold a hearing to adjudicate the violation underlying the seizure and impoundment within five business days after the date of such seizure and impoundment and shall render his or her determination immediately following the conclusion of such hearing.

b. A vehicle, tool or other implement seized and impounded pursuant to this section may be released prior to the hearing provided in subdivision a of this section upon the posting of an all cash bond in a form satisfactory to the commissioner in an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the impoundment and all reasonable costs for removal and storage of such vehicle, tool or implement; provided, however that such release shall be conditioned on presentation of, in the case of (i) a vehicle, proof of ownership or authorization from the owner of the vehicle as ownership is defined by section three hundred eight-eight of the vehicle and traffic law, or (ii) in the case of a tool or other implement or equipment, proof of ownership or authorization by the owner satisfactory to the commissioner.

c. Following an adjudication that has resulted in a determination that the vehicle, tool or other implement was used in connection with unlicensed activity in violation of section 21-11.2 of this code, release of such vehicle, tool or other implement may be obtained upon payment of all applicable fines and civil penalties and all reasonable costs of removal and storage and upon proof of ownership as provided in subdivision b of this section.

d. Notwithstanding the provisions of subdivisions b and c of this section, no person shall obtain release of a vehicle, tool or other implement pursuant to such section unless and until such person submits an application for a home improvement contractor license, or reinstatement of such a license, as appropriate, to the commissioner in the form and containing the information required by the commissioner. A vehicle, tool or implement released pursuant to this subdivision or subdivision b of this section may be used for home improvement activities pending the determination of the commissioner on the license application. In the event that the commissioner denies such application, such use shall cease upon notification of the commissioner's determination. Continuation of such use following notification of denial of a license shall constitute unlicensed activity subject to the fines and other penalties provided in this title. Notwithstanding the provisions of this section, in the event that the owner of the vehicle, tool or other implement is not the person who was found to be in violation of the provisions of section 21-11.2 of this code, such owner may obtain release upon payment of fines and penalties and reasonable costs of removal as provided herein and upon execution of a sworn statement, subject to the provisions of the penal law relative to false statements and satisfactory to the commissioner, that he or she will not permit the person who has

violated such provisions to operate the vehicle, tool or other implement in violation of section 21-11.2 of this code.

e. In addition to any other fine, penalty or sanction for violation of section 21-11.2 of this code, the county of Nassau may commence a civil action for forfeiture to such county of any vehicle as such term is defined in subdivision fourteen of section 10.00 of the penal law or any tool or implement when such vehicle is operated or such tool or implement is used by a person who has been found at least two times within any five year period, commencing after effective date of the local law that added this section to have engaged in unlicensed activity in violation of section 21-11.2 of this code and each such determination has included findings that a vehicle, or tool or implement similar to the tool or implement seized was used in connection with such violations. The interest of a lienholder in such property shall not be subject to forfeiture pursuant to this provision, provided, however, that this provision shall not be construed to entitle a lienholder to more than the outstanding balance of the lien.

f. The county may, pending final resolution of the forfeiture proceeding, retain a vehicle, tool or implement subject to forfeiture pursuant to subdivision e of this section and shall apply to the court, after having provided notice as required to the persons or entities set forth in subparagraphs a and d of this section paragraph, within fifteen days of seizure for a prompt hearing to request the court to take measures to protect the public from unlicensed home improvement businesses and to protect the vehicle from destruction or sale during the pendency of the forfeiture proceeding. At such hearing the court shall determine the probable validity of the retention of the vehicle by the county, or other such appropriate measures, including but not limited to an order prohibiting the

use of the vehicle, tool or equipment in home improvement activities, the posting of a bond or an order restraining the sale or transfer of title of the vehicle. The hearing shall take into consideration, but not be limited to: (i) the existence of probable cause for the underlying seizure; (ii) the likelihood of success on the merits of the forfeiture action; and (iii) determinations of unlicensed home improvement activities within the past five years. Notice pursuant to this paragraph to an owner or lienholder shall be to the address recorded with the department of motor vehicles by certified mail, return receipt requested.

g. It shall be an affirmative defense to forfeiture pursuant to this subdivision that a person who claims an interest in a vehicle, tool or implement, establishes to the satisfaction of the court that 1) the use of the vehicle, tool or implement for the conduct that was the basis for seizure occurred without the knowledge of such person, or if such person had knowledge of such use, that such person did not consent to such use by doing all that could reasonably have been done to prevent such use, and that such person did not knowingly obtain such interest in the vehicle in order to avoid the forfeiture of such vehicle, or (ii) that the conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the vehicle tool or implement while such vehicle, tool or implement was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

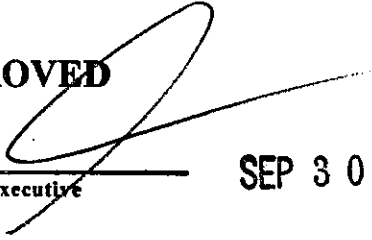
h. The county may, after judicial determination of forfeiture, at its discretion either retain such vehicle for official use by the county; or (ii) sell such vehicle at public sale, the proceeds of which shall be deposited into the general fund.

§3. Section 8-7.0 of the Nassau County Administrative Code is hereby amended by the addition of a new subdivision j, to read as follows:

j. If any part or provision of this section or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this section, or the application thereof to other persons or circumstances.

§4. This local law shall take effect immediately.

APPROVED



County Executive

SEP 30 2004

DEPUTY CTY. EXEC.
ANTHONY CANCELLIERI