

Intro. Res. No. 1080-2010

Laid on Table 2/2/2010

Introduced by Presiding Officer, on request of the County Executive and Legislators Browning, Stern, Losquadro

**RESOLUTION NO. 207 -2010, ADOPTING LOCAL LAW NO. 7 -2010, A LOCAL LAW TO RECODIFY, STRENGTHEN AND CLARIFY THE PROVISIONS FOR LICENSED OCCUPATIONS**

**WHEREAS** there was duly presented and introduced to this County Legislature at a regular meeting held on February 2, 2010, a proposed local law entitled, "**A LOCAL LAW TO RECODIFY, STRENGTHEN AND CLARIFY THE PROVISIONS FOR LICENSED OCCUPATIONS**"; and said local law in final form is the same as when presented and introduced; now, therefore be it

**RESOLVED**, that said local law be enacted in form as follows:

**LOCAL LAW NO. 7 -2010, SUFFOLK COUNTY, NEW YORK**

**A LOCAL LAW TO RECODIFY, STRENGTHEN AND CLARIFY THE PROVISIONS FOR LICENSED OCCUPATIONS**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK**, as follows:

**Section 1. Legislative Intent.**

This Legislature hereby finds and determines that the Suffolk County Code contains various provisions that require licensing of certain occupations and that regulate those licensed occupations.

This Legislature finds and determines that provisions relating to licensed occupations are not currently codified in one coherent chapter and therefore the administration and enforcement of these licensed occupations is hampered.

This Legislature therefore finds and determines that in order to provide for better administration and enforcement of Chapter 275 of the Suffolk County Code, which applies to electricians and plumbers, such Chapter should be recodified to fall under Chapter 345 of the Suffolk County Code, which addresses all licensed occupations.

This Legislature also finds and determines that certain provisions in Chapter 275 of the Suffolk County Code need to be made consistent with the provisions of Chapter 345 which are applicable to all licenses.

This Legislature further finds that Sections 345-9 and 345-12 of Chapter 345 of the Suffolk County Code establish civil fines and criminal penalties to be imposed upon persons for violating certain licensing provisions of the Suffolk County Code and that the language of those sections of the Suffolk County Code needs to be clarified to ensure that such fines apply to all professions under the jurisdiction of the Department of Consumer Affairs and that all persons, as that term is defined in Chapter 345 of the Code, are subject to such civil fines and criminal penalties.

This Legislature further finds and determines that, in light of the time and administrative costs to the County in overseeing the licensing provisions of Chapter 345 of the Suffolk County Code, it is appropriate to authorize the Commissioner of the Suffolk County Department of Consumer Affairs to impose civil penalties on all persons who conduct businesses regulated by the County without a valid license, and the Code should reflect same.

This Legislature also finds that while Chapter 345 currently contains provisions that employees of certain government entities, as well as employees of certain electric, water, and telephone companies do not have to hold licenses in order to perform, among other things, septic work and commercial and industrial paint work on behalf of those entities and companies, as currently drafted private contractors of such entities would likewise not have to hold licenses.

This Legislature finds that in order to provide for consistent administration of county local laws, county resolutions and county ordinances pertaining to consumer affairs, as well as to better protect the residents of Suffolk County, the Suffolk County Administrative Code should be amended to require that non-employee contractors of government entities and electric, water and telephone companies must obtain the appropriate licenses before performing work on behalf of those entities.

This Legislature further finds that while Chapter 345 of the Suffolk County Code currently requires applicants for licenses to demonstrate good character and financial responsibility, there are currently no provisions which require the maintenance of good character standing and financial responsibility and that, in order to better protect the consumers of Suffolk County, good character standing and financial responsibility should be required throughout the duration of a license and/or certificate.

This Legislature also finds and determines that the New York State General Business Law grants concurrent jurisdiction for enforcement of the provisions of Article 36-a of the New York State General Business Law (Home Improvement Contracts), including the provisions found in Section 771 of that Article (Contract Provisions), to the Commissioner of the Suffolk County Department of Consumer Affairs.

This Legislature finds and determines that Section 345-21 of the Suffolk County Code establishes prohibited acts regarding licensed occupations, but does not specifically reflect a prohibition against violating the provisions of Section 771 of the New York State General Business Law.

This Legislature further finds that in order to better protect the public against harmful and dishonest home improvement contract provisions, the language of Section 345-21 of the Suffolk County Code needs to be clarified to include among prohibited acts a violation of Section 771 of the New York State General Business Law.

Therefore, the purpose of this law is to recodify and harmonize the provisions of Chapter 275 of the Suffolk County Code and Chapter 345 of the Suffolk County Code and to strengthen and clarify the application of the provisions Chapter 345 of the Suffolk County Code.

**Section 2. Recodification.**

The provisions of Chapter 275 of the Suffolk County Code, entitled ELECTRICIANS AND PLUMBERS, shall be recodified as Article XI of Chapter 345 of the Suffolk County Code, entitled LICENSED OCCUPATIONS. All references to the current codified provisions of Chapter 275 of the Suffolk County Code shall be updated to reflect the recodification. Such recodification shall not be construed in any way to repeal any provision of Chapter 275 nor impact on Chapter 275 applicability or effectiveness.

**Section 3. Amendments.**

1) Section 275-5 of the SUFFOLK COUNTY CODE is amended as follows:

**§275-5 - Term of license; fee; display**

A. Notwithstanding the provisions of §345-6, a [A] certificate of competency and license issued hereunder shall be for a period of two years from the date of issuance thereof, at the discretion of the Office, and shall expire on the last day of the 24th month of such issuance, subject to the provisions contained in § 275-7 of this chapter. Subsequent renewal shall be for a period of two years.

2) Section 275-16 of the SUFFOLK COUNTY CODE is amended as follows:

**§275-16 - Penalties for offenses**

In addition to the civil penalties applicable to all licenses pursuant to § 345-9 of this Chapter [A] any person who shall violate any provision of this article [chapter] shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000 or imprisonment for not more than one year, or both.

3) Section 345-2 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-2. Definitions.**

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

\*\*\*\*

COMMISSIONER or DIRECTOR -- The Commissioner [Director] of the Department of Consumer Affairs.

\*\*\*\*

DEPARTMENT or OFFICE -- The Department [Office] of Consumer Affairs

4) Section 345-4 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-4. Exempted operations.**

The provisions of this chapter shall not apply to:

A. Employees of any federal, state or local government, or any agencies thereof or of a state or local public authority, as that term is defined in section 2 of the New York Public Authorities Law, provided that such employees are performing the work on behalf of a government entity or public authority. This exemption shall not apply to any work performed by a person, as that term is defined in this chapter, who is not an employee of federal, state or local government or any agencies thereof or of a public authority even if such work is performed on behalf of or pursuant to an agreement with a governmental entity or public authority. [Employees of and on behalf of any federal, state or local government or any agencies thereof.]

B. Employees of and on behalf of any gas or electric corporation, waterworks corporation or telegraph and telephone corporation, provided that such employees are performing the work on behalf of a gas or electric corporation, waterworks corporation or telegraph and telephone corporation. This exemption shall not apply to any work performed by a person, as that term is defined in this chapter, who is not an employee of a gas or electric corporation, waterworks corporation or telegraph or telephone corporation, even if such work is performed on behalf of or pursuant to an agreement with a gas or electric corporation, waterworks corporation or telegraph and telephone corporation.

5) Section 345-73 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-73 - Exempted operations**

Exemptions shall be as follows

A. Employees of any federal, state or local government, or any agencies thereof or of a state or local public authority, as that term is defined in section 2 of the New York Public Authorities Law, provided that such employees are performing the work on behalf of a government entity or public authority. This exemption shall not apply to any work performed by a person, as that term is defined in this chapter, who is not an employee of federal, state or local government or any agencies thereof or of a public authority even if such work is performed on behalf of or pursuant to an agreement with a governmental entity or public authority. [Employees of and on behalf of any federal, state or local government or any agencies thereof.]

6) Section 345-88 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-88 - Exempted operations**

Exemptions shall be as follows

A. Employees of any federal, state or local government, or any agencies thereof or of a state or local public authority, as that term is defined in section 2 of the New York Public Authorities Law, provided that such employees are performing the work on behalf of a government entity or public authority. This exemption shall not apply to any work performed by a person, as that term is defined in this chapter, who is not an employee of federal, state or local government or any agencies thereof or of a public authority even if such work is performed on behalf of or pursuant to an agreement with a governmental entity or public authority. [Employees of and on behalf of any federal, state or local government or any agencies thereof.]

7) Section 345-5 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-5. Application procedure; information required; qualifications; issuance of license**

\*\*\*\*

E. Except as otherwise provided in this chapter, a[A]n individual applicant must be at least 18 years of age, of good character and financially responsible. A licensee must maintain good character standing and maintain financial responsibility during the term of the Licensee's license(s) and/or certificate(s).

8) Section 345-9 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-9. Civil Penalties [Fines; suspension or revocation of licenses].**

A. In addition to any other penalties provided pursuant to this chapter or pursuant to any provisions of any county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code, [T] the Director shall have the power to impose a [fine] civil penalty upon a person not to exceed \$750 for a first violation and \$1,500 for any subsequent violation [upon a licensee] or to suspend or revoke a license or to deny an application for a license or the renewal of a license for any one or more of the following causes:

- (1) Fraud, deceit, misrepresentation or bribery in securing or attempting to secure a license[.] ;
- (2) The making of any false statement in an application for a license[.] ;
- (3) Violation of any provision of this chapter [article, any other appropriate article of this chapter] or any rule or regulation promulgated thereunder[.] ;
- (4) Violation of any provisions of any county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code [any provision of § § 275-3B(3)[, 345-17F, 345-28C, 345-36E, or 345-48C of] the Suffolk County Code[.] ;
- (5) Engaging in prohibited acts as defined in § 345-10 of this article.
- (6) Conducting a business regulated by this chapter without a valid license.
- (7) Failing to maintain good character standing during the term of the license(s) and/or certificate(s).
- (8) Failing to maintain financial responsibility during the term of the license(s) and/or certificate(s).

B. The Director shall have the power to suspend or revoke a license or to deny an application for renewal of a license based on a violation of Chapter 489 or 490 of the Suffolk County Code or a violation of any state, town or village law, ordinance or regulation prohibiting dumping on public lands.

C. No license shall be suspended or revoked nor a fine imposed until after a hearing has been held before the Director upon at least seven business days' notice to the person [licensee]. Such notice shall be served either personally or by certified mail,

return receipt requested, to the last known address of the person [licensee] and shall state the date and place of the hearing as well as enumerate the grounds constituting the allegations against such person [licensee]. The person [licensee] may be represented by counsel and may produce witnesses in his/her/its own behalf. A record of the hearing shall be taken and preserved. For purposes of such hearing, the Director may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records or other documents deemed pertinent to the subject of the hearing.

- 9) Section 345-10 of SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-10. Prohibited acts.**

In addition to any prohibitions contained in this chapter or in any other county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code, [T] the following acts are prohibited:

\*\*\*\*

- 10) Section 345-12 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-12. Unlicensed Activities [Penalties for offenses].**

In addition to any civil penalties imposed by the Director pursuant to this chapter or pursuant to any provisions of any county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code, [A]any person who shall conduct a business licensed by this chapter without obtaining a license therefor or who shall continue to engage in such licensed business after [,] having had a valid license [which has been] suspended or revoked, [shall continue to engage in such licensed business] shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$5,000 or imprisonment for not more than one year, or both. Each such violation shall be deemed a separate offense.

- 11) Section 345-82 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-82 - Unlicensed Activities [Penalties for offenses].**

In addition to any civil penalties imposed by the Director pursuant to this chapter or pursuant to any provisions of any county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code, [A]any person who shall conduct a business licensed by this article without obtaining a license therefor or who shall continue to engage in such licensed business after [,], having had a valid license [which has been] suspended or revoked, [shall continue to engage in such licensed business] shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$5,000 [\$1,000] or imprisonment for not more than one year, or both. Each such violation shall be deemed a separate offense.

12) Section 345-97 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-97 - Unlicensed Activities [Penalties for offenses].**

In addition to any civil penalties imposed by the Director pursuant to this chapter or pursuant to any provisions of any county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code, [A]any person who shall conduct a business licensed by this article without obtaining a license therefor or who shall continue to engage in such licensed business after [,], having had a valid license [which has been] suspended or revoked, [shall continue to engage in such licensed business] shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$5,000 [\$1,000] or imprisonment for not more than one year, or both. Each such violation shall be deemed a separate offense.

13) Section 345-112 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-112. Unlicensed Activities [Penalties for unlicensed operation].**

In addition to any civil penalties imposed by the Director pursuant to this chapter or pursuant to any provisions of any county local law, county resolution, or county ordinance pertaining to consumer affairs, consumer protection, or any matter subject to the jurisdiction of the Department, including, but not limited to, Chapter 249 of the Suffolk County Code, [A]any person who shall conduct a business licensed by this article without obtaining a license therefor or who shall continue to engage in such licensed business after [,], having had a valid license [which has been] suspended or revoked, [shall continue to engage in such licensed business] shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$5,000 [\$1,000] or imprisonment for not more than one year, or both. Each such violation shall be deemed a separate offense.

14) Section 345-21 of the SUFFOLK COUNTY CODE is hereby amended to read as follows:

**§ 345-21. Prohibited Acts.**

\* \* \* \*

E. A failure to abide by any provision of Section 771 of the New York State General Business Law.

**Section 4. Applicability.**

This law shall apply to all actions occurring on or after the effective date of this law.

**Section 5. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or

circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 6. SEQRA Determination.**

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

**Section 7. Effective Date.**

This law shall take effect immediately upon filing in the Office of the Secretary of State.

[ ] Brackets denote deletion of language.

\_\_\_ Underlining denotes addition of new language.

DATED: March 23, 2010

APPROVED BY:

/s/ Steve Levy  
County Executive of Suffolk County

Date: April 13, 2010

After a public hearing duly held on April 6, 2010  
Filed with the Secretary of State on April 28, 2010