



**AN ORDINANCE AMENDING THE TOWN CODE OF THE
TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS
TO THE REGULATION OF PRECIOUS METALS BUSINESSES.**

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, Town Code shall be amended as follows:

PART I. That Chapter 12, Article IX – **Precious Metals Businesses**, be created as follows:

DIVISION 1. GENERALLY

Section 12-276 – Definitions

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dealer means a person who purchases precious metals from the public, other than by an exempted transaction, in the form of jewelry, flatware, silver services, or other forms and holds himself or herself out to the public by signs, advertising, or other methods as engaging in such purchases, including any independent contractor purchasing precious metals under any arrangement in any store. An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this Part and (ii) not subject to the requirements of this Part, even if it is entered into by a person otherwise defined and regulated as dealer. Exempted transactions are:

- a) Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.
- b) Pawns, pledges, or purchases of items made of precious metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of Part I of NCGS Section 66 Article 45.
- c) The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum or money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.

Local Law Enforcement Agency means the municipal police force, if the dealer's business is located within the corporate limits of a municipality having a police force. For the purposes of the Article, this refers to the Town of Nags Head Police Department.

Precious Metal means gold, silver, platinum, or palladium, as defined in this article, but excluding coins, medals, medallions, tokens, numismatic items, art ingots, or art bars.

- a) Gold means any item or article containing 10 karats of gold or more which may be in combination or alloy with any other metal.
- b) Silver means any item or article containing 925 parts per thousand of silver which may be in combination or alloy with any nonprecious metal, or which is marked "sterling".
- c) Platinum means any item or article containing 900 parts per thousand or more of platinum which may be in combination or alloy with any other metal.
- d) Palladium means any item or article containing 950 parts per thousand or more of palladium which may be in combination or alloy with any other metal.

Precious Metals Business means any person engaged in the business of purchasing, trading for, or otherwise taking in any article made, in whole or in part, of gold, silver, platinum, or palladium.

Section 12-277 – Records of transactions required.

Every dealer to whom a Precious Metals Dealer Permit has been issued pursuant to N.C.G.S 66-407 shall adhere to the following:

- a) Shall maintain consecutively numbered records of each precious metals transaction. Each consecutively numbered record shall be made at the time of the transaction and shall contain a clear and accurate description of the transaction. A valid description shall include each of the following applicable and available items of information: the manufacturer's name, the model, the model number, the serial number, and any engraved numbers or initials found on the items; the date of the transaction; the name, sex, race, residence, telephone number and driver's license number of the person selling the items purchased; and the signature of both the dealer or registered employee and the seller. In the event the seller cannot furnish valid, unexpired photographic identification in the form of a drivers license, State-issued identification card, passport, or military identification card, the dealer shall require two forms of positive identification.
- b) The consecutively numbered records required by this section shall be kept either (i) in a paginated, bound book or set of books with pages numbered in sequence or (ii) in an electronic database that prevents record deletion, tracks all modifications to records, and provides for electronic signatures.
- c) The records shall be open at all reasonable times to inspection on the premises by law enforcement agencies, and an individual record shall be retained for at least two years after a transaction. If a dealer maintains a record book rather than an electronic database, the book shall be retained until at least two years following the last recorded transaction.

- d) A copy of each consecutively numbered record entry shall be filed within 48 hours of the transaction in the office of the local law enforcement agency. Records shall be filed in the manner authorized by the local law enforcement agency, which may include reporting electronically by transmission over a computer network, by facsimile machine, or by hand delivering hard copies to the local law enforcement agency. In any case where a technological failure prevents a dealer from reporting electronically or by facsimile, the dealer shall have the option of hand delivering a hard copy of the record to the local law enforcement agency. Regardless of the manner in which the local law enforcement agency allows reporting, a dealer shall provide a hard copy of records upon the request of a law enforcement agency.
- e) The files of local law enforcement agencies that contain copies of records shall not be subject to inspection and examination as authorized by N.C.G.S. 132-6. Any public official or employee who shall knowingly and willfully permit any person to have access to or custody or possession of any portion of such files, unless the person is one specifically authorized by the local law enforcement agency to have access for purposes of law enforcement investigation or civil or criminal proceedings, shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined up to five hundred dollars (\$500.00) in the discretion of the court.

Section 12-278, Items not to be modified.

No item included in a dealer purchase shall be sold, traded, or otherwise disposed of, melted, cut, or otherwise changed in form nor shall any item be removed from the licensed premises, or other location specified on the application for a special occasion permit, for a period of seven days from the date the transaction was reported in accordance with N.C.G.S. 66-410.

Section 12-279, Purchasing from juvenile.

No dealer or employee or agent thereof shall purchase from any juvenile under 18 years of age any article made, in whole or in part, of precious metal.

Section 12-280, Use of unlicensed premises.

No precious metals business shall make use of any property or premises not included within the premises designated in or by the license required by the article. Operation of any precious metal business shall be done in compliance with Section 6.6, Table of Uses Activities of the Unified Development Ordinance.

Section 12-281, Penalties.

Any dealer who violates the provisions of N.C.G.S Section 66 Article 45, Part 2 shall be deemed guilty of a Class 2 misdemeanor. In addition, any dealer so convicted shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each violation shall constitute a separate and distinct offense.

DIVISION 2. LICENSURE

Section 12-282 – Licensing Required.

No person shall operate a precious metals business unless such person shall have first applied for and received a privilege license as required from the Town of Nags Head. In addition, the business shall not be carried on or conducted in any place other than that designated in or by the privilege license.

Section 12-283 – Permit required.

- (a) Dealer Permit – Except as provided in subsection (c) of this section, it is unlawful for any person to engage as a dealer in the business of purchasing precious metals in connection with other business operations without first obtaining a permit for the business from the local law enforcement agency. The Department of Public Safety shall approve the forms for both the application and the permit. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of the local law enforcement agency which is used for conducting a precious metals business, and each permit shall designate the location, place, or premises to which it applies. No business shall be conducted in a place other than that designated in the permit. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for a permit within each jurisdiction is one hundred eighty dollars (\$180.00) to provide for the administrative costs of the local law enforcement agency, including the purchase of required forms and the cost of conducting the criminal history record check of the applicant. The fee is not refundable even if the permits are denied or later suspended or revoked. A permit issued under this section is in addition to and not in lieu of other business licenses and is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.

Any dealer applying to the local law enforcement agency for a permit shall furnish the local law enforcement agency with the following information:

- (1) The applicant's full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five years.
- (2) Current address, and all addresses used by the applicant during the preceding five years.
- (3) Physical description.
- (4) Age.
- (5) Driver's license number, if any, and state of issuance.
- (6) Recent photograph.
- (7) Record of felony convictions.

- (8) Record of other convictions during the preceding five years.
- (9) A full set of fingerprints of the applicant.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. These permits shall be issued in the name of the partnership or association. If the applicant for a dealer's permit is a corporation, each officer, director, and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. These permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Public Safety may provide a criminal history record check to the local law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes. The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

- (b) Employee Requirements – Every employee engaged in the precious metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local law enforcement agency and have his or her photograph taken by the agency. The employee also shall consent to a criminal history record check, which shall be performed by the local law enforcement agency. A person who refuses to consent to a criminal history record check shall not be employed by a dealer required to be licensed under this section. A person who has

been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer required to be licensed under this section, unless the person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of registration. The agency shall issue to the employee a certificate of compliance with this section upon the applicant's payment of the sum of ten dollars (\$10.00) to the agency. The certificate shall be renewed annually for a three-dollar (\$3.00) fee and shall be posted in the work area of the registered employee. An employee is not subject to the requirements of this subsection if the employee is engaged in the precious metals purchasing business only incidentally to his or her main job responsibilities, and each precious metals transaction with which the employee is involved is overseen by a licensed dealer or registered employee. All records of transactions must be signed by the licensed dealer or registered employee at the time of the transaction, as required under G.S. 66-410(a).

The Department of Public Safety may provide a criminal history record check to the local law enforcement agency for an employee engaged in the precious metals business. The agency shall provide to the Department of Public Safety, along with the request, the fingerprints of the employee, any additional information required by the Department of Public Safety, and a form signed by the employee consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The employee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each employee a fee for conducting the checks of criminal history records authorized by this subsection.

- (c) Special Occasion Permit – A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local law enforcement agency; provided, however, that a permittee under subsection (a) of this section shall apply for a special occasion permit with the local law enforcement agency that issued the dealer's permit. The Department of Public Safety shall approve the forms for both the application and the permit. The application shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local law enforcement agency for a special occasion permit shall furnish the local law enforcement agency with the information required in an application for a dealer's permit as set forth in subsection (a) of this section. In addition, the applicant shall provide a physical address where any item included in

a dealer purchase will be held for the period required under N.C.G.S. 66-411. The physical address shall be the location where the purchase was made, unless another physical address within the law enforcement jurisdiction where the purchase was made is approved by the law enforcement agency that issues the permit. The items shall be available at all reasonable times for inspection on the premises by law enforcement agencies.

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association. If the applicant for a special occasion permit is a corporation, each officer, director, and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Public Safety may provide a criminal history record check to the local law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Public Safety, along with the request, the fingerprints of the applicant, any additional information required by the Department of Public Safety, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Public Safety may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The filing fee for a special occasion permit application is one hundred eighty dollars

(\$180.00) to provide for the administrative cost of the local law enforcement agency including purchase of required forms and the cost of conducting the criminal history record check of the applicant. The fee is not refundable even if the permit is denied or is later suspended or revoked. A special occasion permit is in addition to and not in lieu of other business licenses and is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit. A special occasion permit is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form approved by the Department of Public Safety and shall be accompanied by a nonrefundable renewal fee of one hundred eighty dollars (\$180.00).

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals.

Section 12-284, Perjury; punishment.

Any person who shall willfully commit perjury in any application for a permit or exemption filed pursuant to this Part shall be guilty of a Class 2 misdemeanor.

Section 12-285, Bond, or trust account required.

Before any permit shall be issued to a dealer pursuant to N.C.G.S. 66-407, the dealer shall execute a satisfactory cash or surety bond or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina in the sum of ten thousand dollars (\$10,000). The bond or trust account shall be in favor of the State of North Carolina. A surety bond is to be executed by the dealer and by two responsible sureties or a surety company licensed to do business in the State of North Carolina and shall be on a form approved by the Department of Public Safety. Any bond shall be kept in full force and effect and shall be delivered to the law-enforcement agency which first issued a current permit to the dealer. A bond or trust account shall be for the faithful performance of the requirements and obligations of the dealer's business in conformity with this Part. Any law-enforcement agency shall have full power and authority to revoke the permit and sue for forfeiture of the bond or trust account upon a breach thereof. Any person who shall have suffered any loss or damage by any act of the permittee that constitutes a violation of this Part shall have the right to institute an action to recover against such permittee and the surety or trust account. Upon termination of the bond or trust account the permit shall become void.

Secs 12-286 – 12-300. – Reserved.

PART II. Effective Date.

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

Benjamin Cahoon

Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:

Carolyn F. Morris
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy
John Leidy, Town Attorney
Robert Holders

Date adopted: **October 4, 2023**

Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: _____ AYES _____ NAYS

