



**Dutchess County
Department of
Behavioral and Community Health**

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**A.K. Vaidian, MD, MPH
Commissioner**

**Sandra L. Winder
Director
Division of Weights and Measures**

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

LOCAL LAW NO. 5 OF 2018 A LOCAL LAW REGULATING SECONDHAND DEALERS

SECTION 1.

Local Law No. 8 of 1987 Entitled "A Local Law Providing for the Licensing of Precious Metal and Coin Dealers", as amended by Local Law No. 5 of 1997 and Local Law No. 2 of 2011 is hereby repealed upon the effective date of this Local Law.

SECTION 2. LEGISLATIVE FINDINGS & PURPOSE

The purpose of this Local Law is to provide for licensing of secondhand dealers and to create a uniform, countywide registration and record-keeping requirement for secondhand dealers located within the County of Dutchess that will curtail the distribution and facilitate the recovery of stolen property. The opiate epidemic plaguing the nation has impacted Dutchess County causing an increase in property being stolen and exchanged at secondhand dealer establishments. The Legislature finds and determines pursuant to its police and home rule powers that the recordkeeping requirements imposed herein are both reasonable and feasible to implement and will assist the law enforcement community in tracing and recovering secondhand articles as defined herein that are stolen property.

SECTION 3. DEFINITIONS

- a. "Secondhand Dealer" means any person, corporation, partnership, association, limited liability corporation, and the agents, associates or employees thereof, regularly engaged in the commercial exchange, purchase and/or sale of secondhand articles.
- b. "Secondhand Article" means any goods sold at resale, except as specifically provided for herein.
- c. "Identification" means an official document issued by the United States government, or by any state, county, municipality, public agency, or department hereof, provided that such document contains a photographic image of the holder.
- d. "Precious metals" shall mean gold, silver, platinum, titanium, precious and semi-precious stones including coins, utensils, or objects of art containing one or more of these metals.
- e. "Antiques" are such items or collectibles recognized as such by established dealer associations within the industry, other than items defined as precious metals herein.
- f. "Goods" shall mean all things which are movable at the time of identification to the transaction for sale other than the money in which the price is to be paid.
- g. "Antiques Dealer" shall mean a person, corporation, partnership, association, Limited Liability Corporation or other entity that offers to the public for sale antiques.
- h. "Retailer" shall mean a person, corporation, partnership, association, limited liability corporation or other entity operating in Dutchess County that offers to the public for sale goods, wares, or merchandise.
- i. "Commissioner" means the Dutchess County Commissioner of Behavioral and Community Health.

SECTION 4. LICENSE REQUIRED

Effective **June 1, 2019**, no person, corporation, partnership, association, Limited Liability Corporation or other entity shall operate in Dutchess County as a secondhand dealer or hold themselves out as a secondhand dealer without first begin licensed by the Commissioner as provided for herein:

- (a) Every person desiring to engage in any business as a secondhand dealer in the County of Dutchess shall obtain a license therefore from the Commissioner in accordance and subject to, the provisions of this Local Law.
- (b) Every Licensee shall maintain a regular place of business within the County of Dutchess or designate a local agent for the service of process.
- (c) A licensee shall prominently display the license obtained pursuant to this local law in the establishment and visible to the general public. If a licensee shall maintain more than one establishment within the County of Dutchess, he/she shall obtain duplicate licenses.
- (d) No person who, within 15 years previous to applying for a license, has been convicted of burglary, felony possession of stolen property, grand larceny or forgery shall be eligible for a license.
- (e) When an application for a license is filed, the Commissioner shall inform the Dutchess County Sheriff of the filing and shall instruct the applicant in the procedure required by the Sheriff to perform a criminal background investigating through the New York State Division of Criminal Justice Services. On receipt of the investigation, the Sheriff shall inform the Commissioner as to whether or not

the applicant qualifies for a license pursuant to sub-section “d” of this Section. The contents of the investigation shall not be disclosed by the Sheriff.

- (f) Regular license shall expire two (2) years from the date of issuance.

SECTION 5. ISSUANCE OF DUPLICATE LICENSE: FEE

If a license hereunder shall be lost, stolen or destroyed, a duplicate may be issued by the Commissioner on:

- (a) The filing of an affidavit satisfactorily explaining the facts of such loss or theft, and
- (b) The payment of a \$50.00 fee.

SECTION 6. TEMPORARY LICENSE

- (a) The Commissioner may in his discretion issue a temporary license pending satisfaction of application requirements and shall issue a temporary license to any applicant for a secondhand dealer license if he/she has not, within 30 days after receipt of the application for such license, approved or disapproved such application.
- (b) The temporary license shall be for a period of 90 days. If within such 90-day period, the Commissioner shall have failed to approve or disapprove the application, the Commissioner shall then issue a regular license to the applicant. If the application is approved during the term of the temporary license, the Commissioner shall issue a regular license to the applicant.
- (c) The fee for a temporary license shall be \$50.00.
- (d) A temporary license issued by the Commissioner pending satisfaction of application requirements shall be revoked if the applicant fails to timely comply with all application procedures and requirements.

SECTION 7. FEES

- (a) An application fee of \$75.00 shall accompany the application for a secondhand dealer license.
- (b) The fee for a duplicate license for an additional establishment shall be \$50.00.
- (c) The fee for renewal of a license shall be \$60.00.

SECTION 8. EXEMPTION FROM LICENSING REQUIREMENT

Nothing in this Local Law shall be construed to apply to the following:

- a. The sale, or purchase, of any item sold at a garage sale, yard sale, estate sale, or moving sale (collectively referred to herein as “garage sale”), provided that all of the following conditions are met:
 - 1. The items offered for sale are owned by the seller, and/or the seller is authorized by the owner to sell said items; and
 - 2. The garage sale does not exceed a period of seventy-two (72) consecutive hours; and
 - 3. The seller does not conduct more than three (3) garage sales in any consecutive twelve (12) month period; and
 - 4. None of the items offered for sale were purchased by the seller for resale or received on consignment for purposes of resale.
- b. The sale, or purchase, of a secondhand article by a non-profit or charitable organization or on property occupied by any non-profit or charitable organization.
- c. The sale, or purchase, of secondhand books or magazines, wherever sold.
- d. The sale, or purchase, of secondhand articles at an auction held by a licensed auctioneer.
- e. The sale, or purchase, of used furniture, used clothing, or used baby/children’s items.
- f. The sale of electronics and games for electronics are not exempt from the requirements of this Local Law, but are exempt if sold at a garage sale, yard sale, estate sale, or moving sale as provided for herein.
- g. Any transaction involving the sale or disposal of Secondhand Articles regulated by state or federal law.
- h. Internet sales or purchases.
- i. Antiques dealers shall be exempt from the provisions of this law, except in the purchase of Precious Metals as defined, provided that the following conditions are met:
 - 1. At least 80% of the secondhand articles purchased by the antiques dealer for resale are purchased from estates, moving sales, auctions, antique shops, antique shows, flea markets, or in bulk lots; and
 - 2. The antiques dealer has an established antiques shop advertised and promoted as such and maintains a regular schedule of open hours; or
 - 3. The antiques dealer exhibits at least twice a year at established advertised and/or promoted antiques shows in the United States; or
 - 4. The antiques dealer is a private dealer working from home and/or non-retail locations by appointment or invitation and provided that such private dealer offers for sale an inventory of primarily, by count, merchandise fitting definitions of “antiques” or “collectibles: as recognized by established dealer associations and/or promoters, has never been convicted of any crime related to the possession of or sale of stolen goods or any sort, and has applied for and been granted a New York State resale number for collection and submission of sales tax.
- j. The sale, or purchase, of secondhand articles at antique shows, flea markets, or trade shows, where such shows are advertised and/or promoted as such, with the exception of precious metals as defined in this local law.
- k. Used car dealers, unless a used car dealer receives or accepts anything of value other than cash or another used vehicle as a down payment, part payment, or full payment on, of or for the sale of a used vehicle. In the event that any used car dealer accepts or

advertises or holds himself or herself out as willing to accept anything of value other than cash or another used vehicle as a down payment, part payment or full payment on, of or for any used vehicle sold by him or her, such used car dealer shall conclusively be presumed, held and construed to be a secondhand dealer for all purposes and subject to all regulations herein.

- l. The sale, or purchase, of any secondhand article purchased or sold outside of Dutchess County.
- m. The purchase of secondhand articles by secondhand dealers from other secondhand dealers that are regulated by this law.
- n. Licensed Firearms Dealers.
- o. The licensing authority may provide for an exemption from the requirements of this Section, or establish additional or different requirements concerning the description of any property purchased by a secondhand dealer, upon consideration of the nature of the property, transaction or business, including, but not limited to, articles in bulk lots.
- p. Bulk transfers not in the ordinary course of transferor's business as defined by the New York State uniform Commercial Law Section 6-102.

SECTION 9. LICENSE APPLICATION

Applicants for a license pursuant to this Local Law must file with the Commissioner an application, supplied by such Office, containing the following information:

- a. The exact name, address, and telephone number of the applicant and the principals and officers there thereof and the date of incorporation or organization, as applicable; and
- b. The name, business address, residential address, and telephone number of the operator of such business if other than the applicant; and
- c. The address and telephone number where the business is to be conducted; and
- d. The days and hours during which such business will be customarily open to the public; and
- e. A certification that the applicant, including its principals and officers have not been convicted within the immediately preceding ten (10) years of a crime involving theft, larceny, burglary, possession of stolen property, or other fraudulent dealing.

SECTION 10. FINGERPRINTING REQUIRED

Each applicant applying for a Secondhand Dealer License pursuant to this Local Law, including any principals and officers, shall be required to provide fingerprint information to the Dutchess County Sheriff's Office as necessary to obtain a criminal history record check through the New York State Division of Criminal Justice Services/FBI for such applicant.

The applicant's fingerprints and any applicable fees shall be forwarded to the Division of Criminal Justice Services (DCJS) in the form and manner as prescribed by DCJS for a complete criminal background check. All fees associated with fingerprint submission will be paid for by asset forfeiture funds and not the responsibility of the applicant.

Prior to the issuance of a license, the Dutchess County Sheriff, or his designee of the Dutchess County Sheriff's Office, will review the criminal history record information provided by DCJS in connection with the applicant's criminal background and investigation and will either "approve" or "disapprove" said application.

If an Applicant has been convicted of a crime, any decision regarding such applicant's fitness for a license will be made upon consideration of New York State Correction Law §701-703-b and §751-753.

SECTION 11. LICENSING

Upon filing of an application for a license, if the Commissioner, or designee, shall be satisfied that the application complies with the provisions of this Local law, the Commissioner, or designee, shall issue a license to operate as a secondhand dealer. The Commissioner shall approve or deny every application within ninety (90) days from filing. In the event the location of the business changes, licensee shall notify the Commissioner in writing. If there are changes among the principals, officers or operators of such business, licensee shall notify the Commissioner and shall provide fingerprint information to the Dutchess County Sheriff's Office pursuant to Section 9 above. The form of this license shall be prescribed by the Commissioner.

SECTION 12. PROHIBITED ACTS

- (a) No person, firm, or corporation shall engage in any business, trade or transaction in the County of Dutchess as a precious metal exchange establishment unless licensed in accordance with the provisions of this Local Law.
- (b) No object, containing precious metal, shall be purchased by a precious metal exchange establishment from:
 - (1) Any person whose judgment appears to be impaired;
 - (2) Any person under the age of 18 without the written consent of his/her parents or guardian;
 - (3) Any person who is unable to produce proper and reliable identification.
- (c) No article or precious metal as defined herein shall have its identification changed by melting or otherwise, nor shall any such article be sold, transferred or exchanged for a period of five (5) business days from the date that such article is reported by the secondhand dealer to the Sheriff as prescribed in Section 15 (c)(3).
- (d) No entity shall organize, procure, present, produce, or sponsor any show, exhibit, market, or exchange in which precious metals are or may be bought, sold or traded unless such entity has previously advised, in writing, all participants, traders or exhibitors of the license requirements of this Local Law.

SECTION 13. GROUNDS FOR DENIAL OR REVOCATION OF LICENSE

- a. The Commissioner shall have the authority to deny the application for a license of any applicant, where such applicant, including the principals or officers thereof, has been convicted within the immediately preceding fifteen years of a crime involving theft, larceny, burglary, possession of stolen property, other fraudulent dealing, or any felony offenses related to New York State Penal Law Articles 220 and 221.
- b. The Commissioner may revoke any license granted herein in the following situations:
 1. Where the secondhand dealer is convicted of a crime involving theft, larceny, burglary, possession of stolen property, other fraudulent dealing, or any felony offenses related to New York State Penal Law Articles 220 and 221, or of a violation of this Local Law, as provided for in Section 14 below.
 2. Where the secondhand dealer has made a false statement in connection with its application;
 3. Where the secondhand dealer revokes the consent to examine such records and secondhand articles, as provided for in Section 12 below.
- c. Notice of denial or revocation of a license issued pursuant to this Local Law shall be given by the Commissioner of his designee in writing, setting forth specifically the grounds on which such license was either denied or revoked with opportunity to be heard. Such notice shall be transmitted by certified or registered mail. Such denial or revocation may be challenged in a special proceeding conducted pursuant to Article 78 of the New York State Civil Practice Law and Rules. Pending the outcome of such special proceeding regarding the Commissioner's denial or revocation of a license, no person shall operate as a secondhand dealer.

SECTION 14. EXPIRATION AND RENEWAL OF LICENSES

A license issued pursuant to this Local Law, unless voluntarily surrendered or revoked, shall remain in effect for two (2) years. In case any secondhand dealer shall move his/her place of business from the place designated in the license, he/she shall immediately thereupon give notice to the Commissioner and have the same endorsed on the license.

SECTION 15. DISPLAY OF LICENSE

A licensee shall display prominently the license obtained pursuant to this local law in the establishment and visible to the general public.

SECTION 16. RECORDS TO BE MAINTAINED BY SECONDHAND DEALER

- a. Seller Information. Except as otherwise provided herein, no secondhand dealer operating within Dutchess County shall acquire any secondhand article unless such secondhand dealer has obtained and recorded the following information from the Seller of goods or from the person in the position of the seller of the goods:
 1. The amount paid, advances, or loaned for the article;
 2. A detailed and accurate description of the article including any identifying marks;
 3. The serial and model number (if any);
 4. In the case of precious metals, jewelry, and gems, the weight (if applicable) and purity of the precious metal and a photograph of the article;
 5. The seller's identification information as required in subparagraph (b) of this Section 15; and
 6. The date, time and place of the acquisition.

The information obtained shall be recorded on a written receipt, which receipt shall be numbered in consecutive order and maintained in the secondhand dealer's records as provided for herein.

No alterations or erasures are to be made in said receipt. Erroneous entries are to have a simple line drawn through them and the corrected entry made on the next line.

A written receipt shall be issued to the seller and the serial number of the transaction and the information required in Section 15 (a) of this local law.

- b. Identification Information: Prior to acquiring any Secondhand Article, every Secondhand Dealer shall request and review identification from the seller to verify the seller's identity by comparing the seller to the photographic image contained on said identification. The secondhand dealer shall record the seller's name, date of birth and address (or current address if different than that listed on the identification), and the identification number (e.g., motorist ID number) listed on the identification. The secondhand dealer shall make a photocopy or photograph of the front of the identification. If the acquisition is made from a seller who is also a secondhand dealer, the secondhand dealer purchasing the item shall also record the business name and address of such seller and a statement by such seller regarding the number of days the item was held by such seller prior to instant acquisition.
- c. Records Retention/Inspection:
 1. Every secondhand dealer shall maintain for a period of five (5) years all of the information required in subparagraphs a and b of this Section 16. Computerized records may be used to satisfy the requirements of this Local Law, provided that such records include the required information and are available upon reasonable request for inspection in printed format.
 2. All records required by this Local Law and each secondhand Article shall be subject to examination during such times and in such areas of the business that are open to the public by a member of the Dutchess County Sheriff's Office or other police department or law enforcement agency. Consent to such examination shall be a condition of obtaining and retaining the Secondhand Dealer

license; provided, however that a revocation of such consent by the Secondhand Dealer shall not result in a criminal penalty or violation, as provided for in Section 17 of this Local Law. In the event that a Secondhand Dealer revokes the consent to examine such records and Secondhand Articles, the license granted herein may be revoked by the Commissioner. Nothing in this Local Law shall diminish or alleviate the need for voluntary consent or a warrant to search a residence or other location not open to the public.

3. Every Secondhand Dealer shall forward to the Dutchess County Sheriff's Office in electronic format approved by the Sheriff, a copy of records for all transactions (acquisitions) and a copy of the Seller Information required by subparagraphs a and b of this Section 16 for each Secondhand Article acquired in the immediately preceding seventy-two (72) hours. Photographs of precious metals, jewelry and gems shall be required to be transmitted with these forms. The licensing authority may grant exemptions from the requirement of submitting such statements in an electronic format for good cause shown.

SECTION 17. REQUIREMENTS TO HOLD SECONDHAND ARTICLES PRIOR TO DISPOSAL, RESALE OR ALTERATION, AND ADDITIONAL REQUIREMENTS

- a. For a period of five (5) days after the acquisition is reported to the Sheriff of any secondhand article, excluding the day of acquisition (the "holding period"), every secondhand dealer shall maintain the secondhand article in a manner so as to be easily identified with the record documenting the transaction in which said article was acquired. During the holding period, no secondhand dealer shall:
 1. Sell, trade, transfer, remove from the local business premises or otherwise dispose of any secondhand article covered by this Local Law;
 2. Alter in any fashion any such article; or
 3. Commingle any such article with similar items.
- b. As a condition of licensing, the secondhand dealer shall agree to hold, for a period of seventy-two (72) hours, any secondhand article, where a police officer has notified the secondhand dealer that law enforcement suspects that the article is stolen property. The seventy-two (72) hours hold period shall commence at the time of said notification. During the holding period, no secondhand dealer shall:
 1. Sell, trade, transfer, remove from the local business premises or otherwise dispose of any Secondhand Article covered by this Local Law;
 2. Alter in any fashion any such article; or
 3. Commingle any such article with similar items.

SECTION 18. PENALTY

- A. Any secondhand dealer who fails to comply with the provisions of Section 3, 8, 9, 16(a), (b), (c)(1) and 17 of this Local Law shall, upon conviction thereof, be guilty of a Class A misdemeanor as defined in Section 55.10 of the Penal Law of the State of New York as may be amended from time to time. Any secondhand dealer who fails to comply with the provisions of Section 10, 14, 16(c)(3) of this Local Law shall, upon conviction thereof, be guilty of a Class B misdemeanor as defined in Section 55.10 of the Penal Law of the State of New York as may be amended from time to time. Provided, however, that a secondhand dealer's failure to consent to a search of the premises as provided for in Section 16(c)(1) of this Local Law shall not be punishable as a crime.
- B. In addition to the penalty above, any offense against the provisions of this Local Law shall subject the person committing the offense to a civil penalty in the amount of \$500.00 for each time that the offense shall occur collectible by and in the name of the County of Dutchess.
- C. Each day or part thereof on which a violation or failure continues, shall constitute a separate violation.
- D. If the Commissioner has reason to believe that this Local Law is being violated, he shall promptly investigate the matter. If he finds, after notice to the person accused of the violation and opportunity for such person to be heard, that there has been a violation, the Commissioner shall issue an order directed to the person who has committed the violation directing him to cease and desist from the violation.
- E. The Commissioner may bring a proceeding in any court of competent jurisdiction to restrain by injunction violators of his order or otherwise to enforce such orders or provision of this Local Law.

SECTION 19. SUSPENSION OR REVOCATION OF LICENSE

- a. Authority: The Commissioner, at any time for such cause as after investigation he shall deem sufficient, may suspend or revoke any license granted under the provisions of this Local Law. Violation of any of the prohibitions set forth in Section "10" shall be deemed sufficient cause.
- b. Effect: Whenever any licenses shall be revoked, no refund shall be made and no license shall be granted to any person whose license has been revoked within a period of two (2) years from the date of such revocation.
- c. Notice: Notice of the suspension or revocation and the reason therefore in writing shall be served by the Commissioner on the person named in the application by mailing the same to the business address given in the application with a copy of such notice to the County Attorney.
- d. Review: Within twenty (20) business days after service of the notice of suspension or revocation, the licensee may apply to the Commissioner to hear and review the order of suspension or revocation. If so requested, the Commissioner shall hold a hearing and licensee may present evidence on his behalf. Within five (5) days of said hearing, the Commissioner shall either affirm or disaffirm the suspension or revocation of the license issued under this Local Law.

SECTION 20. SEVERABILITY

If any Section of this Local Law of the application thereof to any person or circumstance shall be adjudged invalid by the court of competent jurisdiction such order or judgment shall be confirmed in its operation to the controversy in which it was rendered, and shall not effect or invalidate the remainder of any other provision or any section or the application of any part thereof to any other person or circumstance and to this end, the provisions of each Section of this Law are hereby declared to be severable.

SECTION 21. APPLICATION

This Local Law shall apply to all secondhand dealers operating in Dutchess County.

SECTION 22. EFFECTIVE DATE

This Local Law shall become effective on June 1, 2019, subsequent to filing in the Office of the Secretary of State pursuant to the applicable provisions of the Municipal Home Rule Law and shall apply to all transactions occurring on or after June 1, 2019.

**ADMINISTERED & ENFORCED BY
THE DUTCHESS COUNTY DEPARTMENT OF BEHAVIORAL AND COMMUNITY HEALTH
DIVISION OF WEIGHTS AND MEASURES
98 PEACH ROAD
POUGHKEEPSIE, NEW YORK 12601**