

## LOCAL LAW

### A LOCAL LAW REGULATING SECONDHAND DEALERS

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF CAYUGA COUNTY AS FOLLOWS:**

**Section 1.** Legislative Finding & 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 Cayuga that will curtail the distribution and facilitate the recovery of stolen property. The opiate epidemic plaguing the nation has impacted Cayuga 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 record-keeping 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 2.** 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 thereof, 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 and coins.
- e. "Antiques" are such items or collectibles recognized as such by established dealer associations within the industry.

**Section 3.** License Required. Effective \_\_\_\_\_, no person, corporation, partnership, association, limited liability corporation or other entity shall operate in Cayuga County as a Secondhand Dealer or hold themselves out as a Secondhand Dealer without first being licensed by the Cayuga County Sheriff as provided for herein.

**Section 4.** Exemption from Licensing Requirement. Nothing in this Local Law shall be construed to apply to the following:

- a. The sale 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 garage sale is held on residential property owned, rented, leased, or occupied by the seller or by at least one seller if there are multiple sellers; and
  2. The items offered for sale are owned by the seller, and/or the seller is authorized by the owner to sell said items; and
  3. The garage sale does not exceed a period of ninety-six (96) consecutive hours; and
  4. The seller does not conduct more than three (3) garage sales in any consecutive twelve month period; and
  5. 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 of a Secondhand Article by any non-profit or charitable organization or on property occupied by any non-profit or charitable organization.
- c. The sale of secondhand books or magazines, wherever sold.
- d. The sale of Secondhand Articles at an auction held by a licensed auctioneer.
- e. The sale of used furniture, used clothing, or used baby/children’s items. 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.
- f. Any transaction involving the sale or disposal of Secondhand Articles regulated by state or federal law.
- g. Internet sales or purchases.
- h. The sale of antiques or Secondhand Articles purchased from estate sales, garage sales, or yard sales by an Antiques Dealer, or his/her employee or associate, provided the Antiques Dealer:
  1. Has an established antiques shop advertised and promoted as such and maintains a regular schedule of open hours; or

2. Exhibits at least twice a year at established advertised and/or promoted antiques shows in the United States; or
3. 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 of any sort, and has applied for and been granted a New York State resale number for collection and submission of sales tax.
  - i. The sale of Secondhand Articles at antique shows or trade shows, where such shows are advertised and/or promoted as such.
  - j. *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.*
  - k. *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.*

**Section 5.** License Application. Applicants for a license pursuant to this Local Law must file with the Cayuga County Sheriff’s Office 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 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 years of a crime involving theft, larceny, burglary, possession of stolen property, or other fraudulent dealing.

**Section 6.** License Fee. *Any and all fees associated with the application for a license and/or renewal license to operate as a Secondhand Dealer shall be assumed by the Cayuga County Sheriff's Office and the Cayuga County District Attorney's Office.*

**Section 7.** 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 Cayuga 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 Cayuga County Sheriff or the Detective Lieutenant of the Cayuga County Sheriff's Office Criminal Investigation Division 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 8.** Licensing. Upon filing of an application for a license, if the Sheriff shall be satisfied that the application complies with the provisions of this Local Law, the Sheriff shall issue a license to operate as a Secondhand Dealer. The license shall continue in effect for five (5) years unless surrendered or revoked. The Sheriff 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 Sheriff in writing. *If there are changes among the principals, officers or operators of such business, licensee shall notify the Sheriff and shall provide fingerprint information to the Cayuga County Sheriff's Office pursuant to Section 7 above.* The form of this license shall be prescribed by the Sheriff.

**Section 9.** Grounds for Denial or Revocation of License.

- a. The Cayuga County Sheriff 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 ten 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 Cayuga County Sheriff 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 Sheriff or 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 Sheriff's denial or revocation of a license, no person shall operate as a Secondhand Dealer.

**Section 10.** Expiration and Renewal of Licenses. A license issued pursuant to this Local Law, unless voluntarily surrendered or revoked, shall remain in effect for the lifetime of the corporation, partnership, association, limited liability corporation or other entity. In case any Secondhand Dealer shall move his place of business from the place designated in the license, he shall immediately thereupon give notice to the Cayuga County Sheriff's Office and have the same endorsed on the license.

**Section 11.** Display of License. Every Secondhand Dealer shall cause the Secondhand Dealer license to be prominently displayed at said Secondhand Dealer's place of business or shall exhibit said license upon request of any individual.

**Section 12.** Records to be maintained by Secondhand Dealer.

- a. Seller Information. Except as otherwise provided herein, no Secondhand Dealer operating within Cayuga County shall acquire any Secondhand Article unless such Secondhand Dealer has obtained and recorded the following information:
  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, a photograph of the article;
  5. The seller's identification information as required in subparagraph b of this Section 12; 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.

- 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 12. 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 Cayuga 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 14 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 Sheriff. 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 Cayuga 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 12 for each Secondhand Article acquired in the immediately preceding 72-hours. The required electronic format shall be through LEADS ONLINE, [www.leadsonline.com](http://www.leadsonline.com). Every Secondhand Dealer shall register with LEADS ONLINE and shall utilize LEAD ONLINE to enter the required records. 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 13.** Requirements to Hold Secondhand Articles Prior to Disposal, Resale or Alteration, and Additional Requirements.

- a. For a period of seven (7) days after the acquisition 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:
  - a.1. Sell, trade, transfer, remove from the local business premises or otherwise dispose of any Secondhand Article covered by this Local Law;
  - a.2. Alter in any fashion any such article; or
  - a.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 72-hour hold period shall commence at the time of said notification. During the holding period, no Secondhand Dealer shall:
  - b.1. Sell, trade, transfer, remove from the local business premises or otherwise dispose of any Secondhand Article covered by this Local Law;
  - b.2. Alter in any fashion any such article; or
  - b.3. Commingle any such article with similar items.
- c. *As a condition of licensing, any Secondhand Dealer who purchases, sells or offers for sale new articles, shall obtain those new articles only from an authorized retailer or wholesaler who has been directly appointed by the manufacturer or distributor to sell directly to a consumer.* Nothing in this paragraph c shall prohibit the purchase or sale of new items obtained from individuals who sell less than three (3) of an identical or same type of article within any calendar year.

**14. Penalty.** Any Secondhand Dealer who fails to comply with the provisions of Sections 3, 5, 7, 12(a), (b), (c)(1) and 13 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 Sections 8, 11, 12(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 12(c)(1) of this Local Law shall not be punishable as a crime.

**Section 15. Severability.** If any provision, sentence or clause of this Local Law is held unconstitutional, illegal or invalid by a court of competent jurisdiction, such findings shall not affect or impair any of the remaining provisions, sentences or clauses or their application to persons and circumstances.

**Section 16. Application.** This Local Law shall apply to all Secondhand Dealers operating in Cayuga County, except that this Local Law shall be inapplicable in any city, village or town, during such time as such city, village or town is regulating or licensing the occupation or business in question.

**Section 17. Effective Date.** This Local Law shall become effective \_\_\_\_\_, and shall be filed pursuant to the provisions of the Municipal Home Rule.



