

RESOLUTION NO.

**LOCAL LAW INTRODUCTORY NO. 6 YEAR 2018
A LOCAL LAW REGULATING THE TRANSFER OF
SECONDHAND ARTICLES-APPROVAL OF**

WHEREAS, There has been introduced to the Genesee County Legislature a proposed Local Law Introductory No. 6, Year 2018 entitled “**A LOCAL LAW REGULATING THE TRANSFER OF SECONDHAND ARTICLES.**” Now, therefore

BE IT ENACTED by the Genesee County Legislature as follows:

Section 1. Legislative Finding & Purpose.

The purpose of this local law is to protect the residents of the County of Genesee by discouraging the theft, sale and purchase of stolen goods. Those Secondhand Dealers engaged in the sale of secondhand goods often serve a legitimate function, but may also be used by individuals to dispose of stolen goods. This Local Law will regulate those commercial outlets by requiring Secondhand Dealers to register their businesses, to maintain records of transactions and to provide such records to the Genesee County Sheriff’s Office. These requirements will serve to assist in the recovery of stolen items, assist in the detection and apprehension of such individuals and discourage Secondhand Dealers from taking in articles that they suspect may be stolen, thereby reducing the market for stolen goods and discouraging theft.

Section 2. Definitions.

- a. "Secondhand Dealer" means any person, company, corporation, partnership, association, limited liability corporation, and the agents, associates or employees thereof, engaged in the commercial exchange, purchase and/or sale of “Secondhand Articles” as defined below. Pawnbrokers, precious metal dealers and transient merchants shall be classified as secondhand dealers.
- b. “Transient Merchant” means a business conducted in a store, hotel, building or other structure, etc. for the purchase and sale of “Secondhand Articles” as defined below, and which is intended to be conducted for a temporary period of time and not permanently. If the place in which a business is conducted is rented or leased for a period of six months or less, such fact shall be presumptive evidence that the business carried on therein is a transient business.
- c. “Pawnbroker” means any person or business establishment who holds goods as collateral on short-term, high-interest loans or a person who qualifies as a “collateral loan broker” pursuant to § 52 of the New York General Business Law.
- d. “Jewelry” means articles composed (in whole or in part) of gold, silver, or other precious metals, gems or gemstones which, as constructed, are designed to be worn for personal adornment.
- e. “Jewelry and Coin Exchange Dealer” means persons or business establishments engaged in the business of sale, purchase, or exchange of precious metals and/or jewelry for other objects of precious metal, jewelry, United States currency, bank drafts, other negotiable instruments as defined in the Uniform Commercial Code or any other object or thing of value.

- f. "Secondhand Article" means any article or object, with the exception of clothing and books, that has previously been bought or sold at retail and/or which has been previously used and/or is not in a new condition. This shall include any "gift card" or other electronic payment device that is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, is issued in a specific amount, and may or may not be increased in value or reloaded, or as otherwise defined in Article 26, §396(I), or Article 13, §1315, of the New York State General Business Law.
- g. "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.
- h. "Precious metals" means gold, silver, platinum, titanium, precious and semi-precious stones and coins.

Section 3. License Required.

Effective January 1, 2019, no person, corporation, partnership, association, limited liability corporation or other entity shall operate in Genesee County as a Secondhand Dealer or hold themselves out as a Secondhand Dealer without first being licensed by the Genesee County Clerk 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;
 - 2. The items offered for sale are owned by the seller, and/or the seller is authorized by the owner to sell said items;
 - 3. The garage sale does not exceed a period of three (3) consecutive days;
 - 4. The seller does not conduct more than four (4) 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 any 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 articles at an auction held by a licensed auctioneer.
- d. The sale of any items by a jewelry or coin exchange dealer whose annual gross retail sales are comprised of less than 15% of secondhand articles. Any jewelry or coin exchange dealer claiming this exemption must provide written proof of its applicability by a certified public accountant within 20 days upon request of any law enforcement agency.
- e. The sale of secondhand or used motor vehicles.

- f. The sale of secondhand articles at antique shows or trade shows, where such shows are advertised and/or promoted as such.

Section 5. License Application.

Applicants for a license pursuant to this local law must file with the Genesee County Clerk's Office an application, supplied by such Office, containing the following information:

- a. the exact name, address, and telephone numbers of the applicant and the principals and officers thereof and the date of incorporation or organization, as applicable;
- b. the name, business address, residential address, and telephone numbers of the operator of such business if other than the applicant;
- c. Where the owner is not directly involved with day-to-day operation of said business, the operator must also be included on the application.
- d. If a partnership, corporation or other business entity is involved, the application must designate an operator who is involved in the day-to-day operation of the business. In this situation, the secondhand dealer's license shall be issued to the operator; the names, addresses and phone numbers of the partners, officers or principals shall also be listed on the application. All addresses of persons involved shall be home addresses listing street and number. Any and all assumed names must be included in the application. The license shall be issued in the name of the business entity;
- e. the address and telephone number where the business is to be conducted;
- f. The application shall also include any and all e-commerce websites, including Internet storefronts, third-party sales outlets, as well as any and all written or electronic classified advertisements. The application shall further include any seller names or otherwise identifying names used within those e-commerce sites;
- g. the days and hours during which such business will be open to the public; and

Section 6. License Fee.

The annual license fee shall be \$150. There shall be a fee of \$10 for replacement of a lost license. Such fees shall be paid to the Genesee County Clerk's Office.

Section 7. Licensing.

Before the issuance of a dealer's license, the Sheriff or his or her representative shall have the right to enter upon such premises during normal business hours for the purpose of making inspections. After a dealer's license has been issued, further inspections of the premises may be made to ensure compliance with the laws, ordinances and rules and regulations relating to secondhand business. Upon filing of an application for a license, if the Genesee County Clerk shall be satisfied that the application complies with the provisions of this Local Law, the Clerk shall issue a license to operate as a Secondhand Dealer. The license shall remain in effect for a period of one year unless surrendered or revoked. The Clerk 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 Clerk in writing within ten (10) days of such change. If there are changes among the principals, officers or operators of such business, licensee shall notify the Clerk within ten (10) days of such change. The form of the license shall be prescribed by the Clerk.

Section 8. Grounds for denial or revocation of license.

- a. The Genesee County Clerk may in his discretion deny or revoke any license granted herein in any of the following situations:
 1. Where the secondhand dealer has made a false statement in connection with its application;
 2. Where the secondhand dealer revokes the consent to examine its records and items or refuses to allow inspection of its premises.
 3. If it is determined that the applicant has violated either federal, state or local laws or rules and regulations, the County Clerk may in his discretion issue a conditional license. The conditional license shall state the grounds for the issuance of a conditional license and the conditions under which the applicant shall operate his or her business. Said license shall be signed by the applicant and contain a provision which provides that any violation of the terms of the conditional license shall be deemed to be grounds for the revocation of the conditional license as solely determined by the County Clerk.
 4. Grounds for denial of a license may include but are not limited to reliable information indicating that the applicant, operator or manager of a business has in the past previously operated a business without a required secondhand dealer's license or engaged in fraudulent or deceptive business practices in a business identical to or similar to the business for which the applicant seeks a license pursuant to this chapter. The license may be denied if the investigation conducted by the Sheriff reveals a criminal conviction of the applicant, operator, employee or manager as stated above or a conviction of the applicant, operator, manager or any of its principal officers or employees of a crime involving deceit or misrepresentation or a conviction of any crime involving theft of or receiving stolen goods, whether such conviction was as a principal or an accessory before or after the fact or co-conspirator. The License may be denied if an investigation conducted by the local code enforcement officer reveals that the location of applicant's business premises is not code-compliant or a valid certificate of compliance does not exist. Additional grounds for recommending denial of a license may be the revocation of a prior secondhand dealer's license within the last 10 years.
 5. Any license granted pursuant to this chapter may be revoked if any licensee or any of its officers, directors, members, partners, operators, managers or employees are convicted of any crime, which conviction would have resulted in the denial of the application for a secondhand dealer's license in the first instance.
- b. Notice of denial or revocation of a license issued pursuant to this local law, or the granting of a conditional license, shall be given by the Clerk or his designee in writing, setting forth specifically the grounds on which such license was either denied, revoked or granted conditionally. If the Clerk denies the application or imposes conditions upon the granting of a license, the applicant shall be entitled to a hearing before the County Attorney, within 30 days of the applicant's receipt of such notice, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such decision by the County Clerk's Office. Within 15 days of the hearing, the County Attorney shall issue a written decision which sustains the County Clerk, reverses the decision of the Clerk or remands the matter to the County Clerk for further consideration.

Pending a hearing and adjudication on denial or revocation of a license, no person shall operate as a Secondhand Dealer.

Section 9. Transfer of Licenses

Dealer's licenses shall not be transferred. In the event of any change involving the owner or operator of the business or the business location, a new dealer's license shall be required. A dealer's license shall not be transferred to any person who holds power of attorney.

Section 10. Expiration and renewal of licenses.

A license issued pursuant to this local law must be renewed annually, as measured from the date of the issuance of the initial 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.

Section 12. Records to be maintained by Secondhand Dealer.

- a. Seller Information. Except as otherwise provided herein, no Secondhand Dealer shall acquire or dispose of within Genesee County any secondhand article, including but not limited to precious metals, jewelry and gems, (whether or not acquired or disposed of within the Secondhand Dealer's physical place of business) unless such Secondhand Dealer has obtained and recorded the following information in a substantial bound book in which shall be legibly written in ink and in English at the time of every purchase or sale; and on a receipt, numbered in consecutive order and maintained in the Dealer's records as provided for herein:
 1. The amount paid, advanced, 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 or Purchaser's Identification information as required in subparagraph b below; and
 6. The date, time and place of the acquisition or disposition.

- b. Identification Information. Prior to acquiring or disposing of any secondhand article covered by this local law, every Secondhand Dealer shall request Identification from the seller or purchaser and shall verify the identity of such individual by comparing the individual to the photographic image contained on said Identification. The Secondhand Dealer shall record the individual'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 of the front of the Identification. If the acquisition is made from another Secondhand Dealer, the Secondhand Dealer purchasing the item shall also record the business name and address of the Selling Dealer and the number of days the item was held by the Selling Dealer prior to acquisition.

c. Records Retention/Inspection.

1. Every Secondhand Dealer shall maintain for a period of 5 years all of the information required in subparagraphs a and b of this Section 12. All records required to be maintained pursuant to this local law and all secondhand articles covered by this local law shall be subject to examination during normal business hours by any member of the Genesee County Sheriff's Office or other police department or agency.
2. Every secondhand dealer shall allow his place of business and all articles therein to be examined by any member of a law enforcement agency.
3. If a secondhand dealer, pawnbroker, or jewelry and coin exchange dealer business, as defined above, employs more than five people at a location, the employee names, dates of birth, and dates of employment shall be kept and made available for inspection by the Sheriff or his representative during the time of such employment and for one year after termination of such employment;
4. Failure to maintain the records required by this Section 12 shall constitute presumptive evidence of a crime.

d. Electronic Records

Every dealer covered by this chapter shall upload to the Genesee County Sheriff electronic records of all reportable transactions. Each transaction record shall contain all information required by this chapter and shall be uploaded via Internet connection to an electronic reporting service determined by the Genesee County Sheriff according to the following procedures:

1. Using point of sale software, all dealers covered by this chapter shall review the compatibility of their software with the electronic reporting service used by the Genesee County Sheriff, and dealers with compliant point of sale software shall electronically upload all required information from their point of sale software to the specified electronic reporting service via Internet connection using the upload process or reporting service; or
2. All dealers covered by this chapter and using point of sale software noncompliant with that utilized by the Genesee County Sheriff's office or not using point of sale software shall manually enter all reportable transactions into the electronic reporting service via Internet connection.
3. In the event that any dealer covered by this chapter is unable to successfully upload transaction records via the electronic reporting service within the required 48 hours, the dealer shall, within 24 hours of the unsuccessful upload, notify the Genesee County Sheriff of the reason for the submission failure and provide the Genesee County Sheriff with an estimated time of compliance. Under these circumstances, the dealer shall provide the Genesee County Sheriff a daily electronic data table or spreadsheet of all transactions that would otherwise have been submitted via the electronic reporting service. This data shall either be hand delivered or e-mailed to the Sheriff no later than one business day after the transaction date.

Section 13. Prohibited Acts.

- A. No secondhand dealer may purchase any secondhand property from any person who appears to be under the influence of alcohol or drugs, any person under the age of 18 years or any person obviously providing false information.
- B. It shall be unlawful for any pawnbroker, secondhand dealer or jewelry and coin exchange dealer to sell, dispose of, destroy, alter or remove from such dealer's premises any articles, jewelry or precious metals until the expiration of 10 calendar days after the electronic reporting by such dealer of any such articles, jewelry or precious metals.
- C. When requested not to do so by the appropriate local law enforcement agency in connection with a law enforcement investigation, it shall be unlawful for any pawnbroker, secondhand dealer or jewelry and coin exchange dealer to sell, dispose of, destroy, alter or remove from such dealer's premises any articles, jewelry or precious metals until the expiration of 30 calendar days from the date of the request. Upon the written request of the law enforcement agency, the property shall be held for up to two additional thirty day periods.
- D. Secondhand dealers shall not employ any person who has been convicted of any crime related to the operation of a business or who has had a secondhand dealer's license revoked or denied nor have any such person working in conjunction with their business.
- E. No secondhand dealers shall permit his or her place of business to remain open for the transaction of business any time except between the hours of 8:00 a.m. and 11:00 p.m.

Section 14. Requirement to Report Suspicious Offers to Sell Articles.

If any individual shall offer to sell any article to a secondhand dealer under circumstances which would provide reason to believe that such article may be stolen or acquired by dishonest means, it shall be the dealer's obligation to immediately report the same to the Genesee County Sheriff's Office.

Section 15. Release of Stolen Property.

- A. A secondhand dealer shall release to the Genesee County Sheriff's office or other law enforcement agency any item in the secondhand dealer's possession if:
 - 1. The item is established to be stolen;
 - 2. The owner of the item or the victim of the theft has positively identified the item and provided an affidavit of ownership and made a report of the theft to a law enforcement agency;
 - 3. The stolen property report describes the item by one or more of the following: date, initials, an insurance record, a photograph, a sales receipt, a serial number, specific damage, a unique engraving or a statement of facts that show the item is one of a kind; and

4. The secondhand dealer is given a receipt for the item released.
- B. When the Genesee County Sheriff's office or other law enforcement agency no longer needs an item for evidence, it shall returned to the owner.

Section 16. Penalty.

Any Secondhand Dealer who fails to comply with any of the provisions 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. Such violation shall be punishable as defined in the Penal Law of the State of New York as may be amended from time to time. Conviction of any offense against the provisions of this local law shall constitute grounds for denial or revocation of a license.

Section 17. 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 18. Application.

This local law shall apply to all Secondhand Dealers operating in Genesee County.

Section 19. Effective Date.

The local law shall become effective January 1, 2019 and shall be filed pursuant to the provisions of the Municipal Home Rule Law.

WHEREAS, the Clerk of the Genesee County Legislature did post a certified notice of the Public Hearing on said proposed Local Law on the bulletin board in the Old Courthouse, and

WHEREAS, the Clerk of the Genesee County Legislature did cause to be published in *The Daily News* the Official Newspaper of the County of Genesee, the Notice of Public Hearing on Local Law Introductory Number 6 year 2018, and

WHERAS, the Public Hearing was held at 5:30 p.m. on the 12th day of December 2018, in Batavia, New York, at which time all interested persons who wished to speak were heard. Now, therefore, Be it

RESOLVED, That “**A LOCAL LAW REGULATING THE TRANSFER OF SECONDHAND ARTICLES**” to be known as Local Law Number ____ of the Year 2018 for the County of Genesee is hereby adopted.