



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

Montgomery County Regulation on

SECONDHAND PERSONAL PROPERTY

Issued by: County Executive
Regulation No. 20-16

Authority: Montgomery County Code (2004) Section 44A-3, 44A-4 and 44A-5

Supersedes: Executive Regulation 50-89

Council Review: Method (3) under Code Section 2A-15

Register Vol. 33 No. 8

Effective Date: _____

Comment Deadline: August 31, 2016

Summary: Changes were made to Chapter 44A, Secondhand Personal Property, by 2009 Laws of Montgomery County, ch. 6 (Bill 33-08). Consequently, amendments need to be made to Executive Regulation 50-89 as a result of the changes made in the underlying law. Licenses are issued by the Office of Consumer Protection. Certain technical amendments are also needed to make the Executive Regulations internally consistent after the passage of Executive Regulation 4-08. In addition, amend the definition of secondhand personal property so that certain items under \$75 are not included in the definition and allow for payment by in-store credit in addition to by check.

Staff contact: Tracy Rezvani
Office of Consumer Protection
(240) 777-3774

Address: Office of Consumer Protection
Council Office Building
100 Maryland Avenue, Suite 330
Rockville, Maryland 20850

Background: The authority to promulgate regulations regarding the exemption from Chapter 44A of dealers who derive less than 10% of their gross personal property sales from the sale of secondhand



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

personal property and the right to be exempt was repealed by 2009 Laws of Montgomery County, Ch. 6, § 1 (Bill 33-08).

The law also changed the Office issuing licenses to the Office of Consumer Protection. Further, secondhand personal property shop owners in the County have requested amendments to the secondhand personal law to better conform to their business needs.

COMCOR 44A.03.01 Secondhand Personal Property

44A.03.01.01 Definitions

When used in these regulations:

(a) Dealer means any person conducting the business of buying, obtaining, acquiring, [or] receiving, or marketing secondhand personal property, including through the internet or another electronic method, and any person engaged as an auctioneer.

(b) Chief means the Chief of the Department of Police.

[(c) Merchant means a person who regularly deals in personal property or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practice of goods involved in transactions involving personal property or to whom such knowledge or skill may be attributed.]

[(d)]c Person means an individual, corporation, business trust, estate, trust, partnership association, two or more persons having a joint or common interest, or any other legal or commercial entity.

[(e)]d Personal property means radios and other audio equipment; televisions and other video equipment; photographic, optical, and computer equipment; typewriters, calculators and other electronic or electrical home or office appliances, machines or equipment, firearms; bicycles; jewelry; furs; leather goods; watches; paintings; fine or historic china; crystal, glass, or porcelain; object d'art; power tools; carpets and rugs; musical instruments; and any items serialized, marked for personal identification purposes, or engraved.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

[(f)]e Secondhand personal property means previously owned personal property which is offered for sale or as collateral by any person other than [a merchant] the manufacturer, wholesale distributor, or original retail seller acting in the ordinary course of business. It does not include personal property purchased at a public sale. It does not include jewelry; furs; leather goods; paintings; fine or historic china; crystal, glass, or porcelain; objects d'art; and carpets and rugs with a resale value of seventy-five dollars or less.

[(g)]f Public sale means a sale open to the public and held in a location open and accessible to the public pursuant to public notice of the time and place of the sale.

44A.03.01.02 Secondhand Personal Property Dealer's License

(a) A person must not act as a dealer unless the person possesses a dealer's license issued by the Office of Consumer [Affairs]Protection. The license must be displayed to the public wherever the person conducts the business of a dealer. No individual may work as an officer, employee, or agent engaged in transactions involving Secondhand Personal Property for a person required to be licensed by this chapter unless the dealer possesses a valid and current dealer's license.

(b) Pursuant to Montgomery County Code [Section 44A-8], Chapter 44A, Section 44A-2 [of the Montgomery County Code, 1984, as amended, the following license fees are established for any person conducting] persons engaged in the business of [a dealer in] buying, obtaining, acquiring, marketing or receiving secondhand personal property must possess a dealer's license issued by the Office of Consumer Protection. Pursuant to the Montgomery County Code, Chapter 44A, Section 44A-8(b), the County Executive may establish an annual license fee in an amount not to exceed the estimated costs of administration and enforcement.

[The annual fee for any license is \$20.00; except that for any license issued after February 1 of each year, the fee is one-half the annual fee.]

(c) Each application for a license must be made on the forms required by the Office of Consumer [Affairs] Protection.

44A.03.01.03 Reporting Forms



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

(a) Dealers must record and report all transactions on forms issued by the Montgomery County Department of Police. These report forms must comply with Section 44A-3.

(b) Dealers may obtain a supply of the appropriate report forms from any Montgomery County Department of Police District Station or at Police Headquarters, [2350 Research Boulevard, Rockville,] 100 Edison Park Drive, Gaithersburg Maryland. A fee for these forms may be charged in an amount not to exceed the estimated cost of materials and printing.

(c) Completed transaction forms must be kept on site at the business for one year and open to inspection during this one year period. [delivered to the Montgomery County Department of Police District Station that services the area where the transaction took place or other location designated by the Chief. They must be delivered on or before the first business day of each week.] These reports must be complete, correct, legible and contain all information required in Section 44A-3.

(d) Dealers shall also record and report all transactions on electronic forms through the electronic reporting system required by the Montgomery County Department of Police.

44A.03.01.04 Inspection by Montgomery County Department of Police

(a) A dealer must permit any officer or authorized representative of the Montgomery County Department of Police, or other police departments having jurisdiction, to examine the books and records required by this chapter; to examine any personal property purchased, obtained, acquired, received or stored at the business location; and to require retention for an additional [18] 30 days beyond the storage period specified in Chapter 44A-4, Section (b)* of any property known or believed by the police to be missing or stolen.

(b) At the request of the licensed dealer, the police officer or authorized representative conducting the inspection must sign a log indicating his name, rank, date, duty assignment, and time of the inspection. A police officer obtaining items of secondhand personal property from the dealer must give the dealer a written receipt specifying the description of the item taken, the officer's name, rank and duty assignment, as well as the date and time of receipt of the item(s).

44A.03.01.05 Storage of Secondhand Personal Property



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

(a) Items may be stored at other locations in Montgomery County which have been approved by the Chief, Investigative Services Bureau, Montgomery County Department of Police, or his designee.

(b) Auctioneers must not store items of secondhand personal property at locations within Montgomery County, other than their regular business location, without written permission from the Chief, Investigative Services Bureau.

(c) Auctioneers must report acquisitions of all secondhand personal property as required in 44A.03.01.03 of this Executive Regulation, and also must list on the reporting form the location where these items are stored.

(d) Auctioneers are not exempt from any other provisions of Chapter 44A or of this Executive Regulation.

(e) The requirements of 44A-4 subsections (a) and (b) are not applicable to any secondhand personal property which has been inspected and received written clearance for earlier disposition by the Chief, Investigative Services Bureau or his designee. This request for clearance must be made in writing by the dealer to the Chief, Investigative Services Bureau, Montgomery County Department of Police, [2350 Research Boulevard, Rockville, Maryland 20850] 100 Edison Park Road, Gaithersburg, Maryland 20878.

44A.03.01.06 Payment by Check or In-Store Credit

A dealer must pay for the purchase of all secondhand personal property by check or in-store credit, unless the total amount paid does not exceed \$10.00 for each transaction.

44A.03.01.07

If a dealer fails to comply with any section of Chapter 44A, Secondhand Personal Property, or these Executive Regulations:

(a) Montgomery County may obtain restitution from the dealer on behalf of an injured party.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

(b) The dealer must be subject to the penalties prescribed in Montgomery County Code, 1984, as amended, Section 44A-17.

(c) After restitution has been ordered by any court having jurisdiction, the dealer has five days, excluding weekends and holidays, to satisfy this order. If not satisfied, the Office of Consumer [Affairs] Protection must afford the dealer an opportunity for a hearing to show cause why his/her license should not be revoked or suspended, in accordance with Section 44A-13.

(d) The hearing officer has the power to revoke, suspend, or refuse to renew the license of any dealer who fails to comply with an order for restitution from any court having jurisdiction.

[44A.03.01.08 Exemption of Certain Dealers] Reserved

[(a) Any dealer who derives less than 10 percent of its gross annual sales from the sale of secondhand personal property may apply to the Montgomery County Office of Consumer Affairs for an exemption of the licensing, holding, recordkeeping or reporting requirements.

(b) Upon application, the dealer must submit a statement under oath that less than 10 percent of the gross annual sales of his business is derived from the sale of secondhand personal property.

(c) Upon application, the dealer must submit a statement that the applicant has authorized the Montgomery County Department of Police and/or Office of Consumer Affairs to inspect the books, records, inventory, and premises of the business making the application in order to verify that less than 10 percent of its gross annual sales is derived from the sale of secondhand personal property.

(d) Any dealer granted an exemption under section 8(a) of this regulation must still comply with the holding, record keeping, and reporting requirements of Chapter 44A of the Montgomery County Code 1984, as amended, and of this executive regulation of any transaction involving a secondhand firearm. The exemption granted by the County Office of Consumer Affairs must state that any firearms transaction must be in compliance with Chapter 44A.]

44A.03.01.09 Exemption of Charitable Organizations

(a) Charitable organizations may apply for an exemption to the licensing, holding, recordkeeping, or reporting requirements of this chapter to the Montgomery County Office of



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Secondhand Personal Property	Number 20-16
Originating Department Department of Police and the Office of Consumer Protection	Effective Date

Consumer [Affairs] Protection.

(b) The applicant must provide all such records and assistance necessary for determining that the applicant is a bona fide charitable organization entitled to such an exemption.

(c) Organizations which accept only donated goods are exempt from the licensing, recordkeeping, or reporting requirements of this chapter.

44A.03.01.10 Revision of Regulations

These Regulations are subject to revisions as the need arises and as approved by the County Executive for Montgomery County, Maryland.

44A.03.01.11 Severability

The provisions of this regulation are severable. If a court holds that a provision is invalid or inapplicable, the remainder of the regulation remains in effect.

44A.03.01.12 Effective Date

This regulation becomes effective [thirty days after adoption by] when the County Council receives a copy of the adopted regulation.

Isiah Leggett, County Executive

Approved as to form and legality,

/ 7-6-16
Office of the County Attorney/Date