

## Chapter 502: SECONDHAND DEALERS AND SECONDHAND COLLECTORS

[HISTORY: Adopted by the Licensing Authority of the Town of Barnstable 3-16-09. Amendments noted where applicable.]

### GENERAL REFERENCES

Noncriminal disposition — See Ch. 1, Art. I.

Jurisdiction of Licensing Authority — See Ch. 121, § 121-6F.

Junk on streets — See Ch. 206, Art. I.

### § 502-1. Definitions.

ACCEPTABLE IDENTIFICATION means either:

A. A current driver's license that includes the date of birth, photograph, and physical description of the person offering the identification; or

B. Two other pieces of current identification, at least one of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.

POLICE CHIEF means the Chief of Police of the Town of Barnstable or her or his designee.

REGULATED PROPERTY means the following used property:

A. Precious metals, including but not limited to, any metal valued for its character, rarity, beauty or quality, including gold, silver, copper, platinum or other metals, whether as a separate item or in combination with other items.

B. Precious gems, including but not limited to, any gem valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or other precious or semi-precious gems or stones, whether as a separate item or in combination with other items or as a piece of jewelry.

C. Watches and jewelry containing precious metals or precious gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, chains, pocket watches, wrist watches, or stop watches.

D. Sterling silver flatware, including but not limited to, knives, forks, spoons, candlesticks, coffee and tea sets, or ornamental objects.

E. Any electronic audio, video or photographic and optical equipment along with computer or computer equipment or recordings in any form.

F. Any power tools or equipment.

G. Musical instruments.

H. Sporting equipment.

I. Automobiles, boats, planes, motorcycles in whole or taken in parts, or any other type machinery.

J. Collectibles; including objects of art, coins, currency and antique objects, but not including those items identified in section 502-8, section H.

SECONDHAND COLLECTOR shall have the same meaning as the term "junk collector" G.L c. 140 § 56.

SECONDHAND DEALER shall have the same meaning as the term "junk dealer" and keeper of a shop for the purchase, sale or barter of junk, old metals or second hand articles in G.L c. 140 § 54."

**§ 502-2. Issuance, Renewal and Revocation of Licenses Required.**

A. Secondhand collectors and secondhand dealers must obtain a license to conduct said activities.

B. The Licensing Authority of the Town of Barnstable may after notice and a public hearing deny an original or renewal application for a Secondhand Dealer or Secondhand Collector License or revoke an issued license if it has probable cause to believe any of the following conditions exist after a public hearing:

(1) The applicant, or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has owned or operated a Secondhand Dealer or Secondhand Collector business regulated under this regulation or any substantially similar license and, within the five years prior to the application date;

(2) Has had a Secondhand Dealer or Secondhand Collector License revoked for a reason that would be grounds for a denial or revocation pursuant this ordinance; or

(3) The Secondhand Dealer or Secondhand Collector business has been found to constitute a public nuisance.

(4) The licensee applicant, or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has been convicted of a felony or any crime involving a false statement or within 15 years prior to the application date.

(5) The applicant has:

a. Knowingly made a false statement in the application.

b. Knowingly omitted information requested to be disclosed in the application; or

c. Completed the application with reckless disregard for the truth or accuracy of the statements made therein.

(6) A lawful inspection of the Secondhand Dealer or Secondhand Collector business premises by the Police Chief or his designee has been unjustifiably refused by a person who in part or whole, manages or operates the business.

(7) The Secondhand Dealer or Secondhand Collector business, the applicant or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business, has more than five violations of these regulations, any State or Federal law, or any combination thereof within a two-year period, including the two years prior to the application date.

(8) The Secondhand Dealer or Secondhand Collector business, the applicant or any person who in part or whole, owns, manages or operates the Secondhand Dealer or Secondhand Collector business has been convicted of any law of the Commonwealth of Massachusetts that is contrary to the type of secondhand business to be conducted such as, but not limited to: Receiving stolen property, any form of breaking and entering, larceny's from a person, or any other form of larceny, or any form of aggravated assault, as verified by a CORI by the Police Chief or his designee.

(9) Such other grounds as the Authority determines to be in the public interest or in violation of the conditions of the license or any law or regulation of the commonwealth or the Town of Barnstable.

### **§ 502-3. Inspection of Property and Records.**

A. Whenever necessary to make an inspection to enforce the provisions of this ordinance, or when the Police Chief or his designee has reasonable grounds to believe more likely than not that a specific item of regulated property held by a Secondhand Dealer or Secondhand Collector is associated with criminal conduct, the Police Chief or his designee may enter the premises of the Secondhand Dealer or Secondhand Collector at any reasonable time, provided that the premises are occupied at the time of entry and the Police Chief or his designee presents proper official identification at or near the time of entry. If entry is refused, the Police Chief or his designee shall have recourse to every remedy provided by law to secure entry, including an administrative search warrant or a criminal search warrant.

B. Authority to inspect Secondhand Dealer or Secondhand Collector premises under this regulation is in addition to and not in limitation of the authority the town or the Police Chief or any police officer would otherwise have to enter the business premises.

C. Once allowed to enter the premises of the Secondhand Dealer or Secondhand Collector, the Police Chief or his designee may inspect property kept there. The Police Chief or his designee may also inspect the business records associated with regulated property and perform any duty imposed upon the town or the Police Chief by this regulation.

### **§ 502-4. Record Keeping.**

A. The Police Chief or his designee shall design a purchase report form and make copies available to all Secondhand Dealers or Secondhand Collectors. Secondhand Dealers or Secondhand Collectors shall utilize these forms, or any other substantially similar form approved by the Police Chief, to record purchases of regulated property. The form may request any information reasonably calculated to help the Police Chief identify the purchaser, the seller or the property associated with the purchase of regulated property.

B. Whenever a Secondhand Dealers or Secondhand Collectors purchases regulated property for business purposes, the Secondhand Dealers or Secondhand Collectors shall obtain acceptable identification from the seller along with the seller's current residence address. The Secondhand Dealers or Secondhand Collectors shall fill out a purchase report form in all relevant aspects at the time of the purchase. A purchase report form as required to be filled out by this section shall be filled out in legible English. The seller shall sign his or her name on the filled-out form.

C. A digital photograph will be taken of each item purchased as defined under regulated property section 1-E. The photograph may be stored electronically, but are subject to the same record keeping requirements as listed in section 6-A. Copies of the photographs will be made available to the Chief of Police in a timely manner, and are subject to the same rights of inspection as listed in section 8.

D. The licensee shall cause to be delivered to the Barnstable Police Department on a weekly basis, a copy of all transactions recorded in the ledger on the form provided. If, during the preceding week such Secondhand Dealers or Secondhand Collectors has taken no articles in, he/she shall make out and deliver to the Police Department a report of such fact.

### **§ 502-5. Posting of Licenses and Notices.**

A. All licenses shall be conspicuously posted in an accessible place on the licensed premises, available at all times to the proper authorities.

B. A secondhand dealer shall post the following notice no smaller than eight and one-half inches by 11 inches with lettering no smaller than one-fourth of an inch in height outside each point of entry intended for patron use and at or near each place where a secondhand dealer purchases used property in the regular course of business.

**NOTICE:**

The sale or attempted sale of property to a secondhand dealer without consent of the property's owner is punishable by a civil penalty not to exceed \$300 per item.

Don't sell property without consent of the property's owner. You will be held strictly liable for violation of this law.'

If a significant number of the patrons of the regular second-hand dealer use a language other than English as a primary language, the notice shall be worded in both English and the primary language or languages of the patrons.

**§ 502-6. Purchases by a Secondhand Dealer or Secondhand Collector.**

A. A secondhand dealer or secondhand collector shall not make any cash purchase in an amount that exceeds \$50.00 [fifty dollars and zero cents].

B. A secondhand Dealer must not carry on the business of buying or selling secondhand property except at the premises designated in the dealership license.

C. A secondhand Dealer must not purchase any property whose serial number or other identifiable marking has been wholly or partially tampered with or removed.

D. A secondhand dealer or secondhand collector may not purchase any item from any person under the age of 18 (eighteen).

**§ 502-7. Unauthorized Sale of Property.**

A. No secondhand dealer or secondhand collector may purchase or sell any property of any type without the consent of the owner.

B. No purchase will be made from anyone under the age of 18.

**§ 502-8. Holding Periods.**

A. A copy of every purchase report form filled out as required by this ordinance shall be kept on the premises of the Secondhand Dealer or Secondhand Collector business during normal business hours for at least three (3) year from the date of purchase. The report form shall be subject to inspection by the Police Chief or his designee.

B. All regulated property in the categories of precious metals or precious gems, defined in Sec 2 A-D, purchased by a Secondhand Dealer or Secondhand Collector and required to be recorded on a purchase report form shall be held by said Secondhand Dealer or Secondhand Collector for at least 21 days from the date of purchase.

C. All other regulated property purchased by a Secondhand Dealer or Secondhand Collector and required to be recorded on a purchase report form shall be held by said Secondhand Dealer or Secondhand Collector for at least 15 days from the date of purchase.

D. The Secondhand Dealer or Secondhand Collector shall maintain the property in substantially the same form as when purchased and shall not alter, exchange or commingle the property. During the holding

period the regulated property shall be kept on the business premises during normal business hours and shall be subject to inspection by the Police Chief, or his designee.

E. The Police Chief or his designee may give written notice to a Junk Dealer or Junk Collector holding regulated property that the Police Chief or his designee has reasonable grounds to believe more likely than not a specific item of regulated property is associated with criminal conduct. The Secondhand Dealer or Secondhand Collector holding the regulated property shall then continue to hold the property specified in the notice in the same manner and place as required under subsection (B) of this section until released by the Police Chief.

F. The holding period for any item of regulated property shall not exceed 180 days from the date of purchase.

G. A Secondhand Dealer or Secondhand Collector may from time to time request in writing that the Police Chief shorten the length of the holding period. If the Police Chief or his designee determines relief from the holding period is appropriate due to unreasonable hardship, the Police Chief or his designee shall provide the Secondhand Dealer or Secondhand Collector who requested relief with written authorization to sell, transfer or otherwise dispose of the regulated property. The request shall identify the property and state the basis or bases of the unreasonable hardship or hardships. The authorization shall be effective only upon delivery of the written authorization to the second-hand dealer.

H. Secondhand Dealers, retailing or wholesaling used property limited to the following, are exempt from section B above:

(1) Used clothing, furniture, costume jewelry, knickknacks, footwear, and house ware items such as dishes, pots, pans, cooking utensils, and cutlery; or

(2) Used clothing, furniture, costume jewelry, footwear and house ware items such as dishes, pots, pans, cooking utensils and cutlery, obtained only from or through a "registered charity" or by donations; or

(3) Used books, papers, or magazines.

#### **§ 502-9. Testing of weighing and measuring devices.**

All weighing or measuring devices used by a licensee in the conduct of the licensed business shall be tested and sealed by the Town of Barnstable Weights and Measures Division prior to being placed in service.

#### **§ 502-10. Violations and Penalties.**

A. Violation of any provision of this chapter may be prosecuted, as a criminal matter or as an administrative procedure or by the method provided in § 21D of Chapter 40 of the General Laws. Each violation shall be considered separately.

B. Whoever violates the provisions of this chapter shall be fined not more than \$300. The Licensing Authority may suspend, revoke or modify any license issued by them whenever they have reasonable cause to believe the licensee has violated the terms, conditions or regulations pertaining to such license. Any violation of this chapter enforced by the methods provided in § 21D of Chapter 40 of the General Laws shall be subject to a fine of \$250.

#### **§ 502-11. Severability.**

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.