

# NEW YORK CITY POLICE DEPARTMENT

## Notice of Adoption

Notice is hereby given that pursuant to the authority granted by the Police Commissioner by Section 435 of the New York City Charter (“Charter”) and Sections 20-267, 20-273 and 20-277 of the New York City Administrative Code, and in accordance with Section 1043 of the Charter, the Police Department has promulgated amendments to Chapter 21 of Title 38 of the Official Compilation of the Rules of the City of New York, entitled “Recordkeeping for Pawnbrokers and Second-Hand Dealers and Related Inspections.”

A public hearing to consider the adoption of this proposed rule was held by the Police Department on July 22, 2016. Comments received from the public in connection with the rulemaking are found at <http://rules.cityofnewyork.us/comments-view/25926>.

New material is underlined

[Deleted material is in brackets]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The title of Chapter 21 of Title 38 of the Rules of the City of New York is amended to read as follows:

### **CHAPTER 21 RECORDKEEPING FOR PAWNBROKERS AND [CERTAIN] SECOND-HAND DEALERS AND RELATED INSPECTIONS**

§ 2. Section 21-01 of Chapter 21 of Title 38 of the Rules of the City of New York is amended to read as follows:

#### **§ 21-01 Introduction.**

[The following rule was] Sections 21-02 through 21-09 of this Chapter have been promulgated by the Police Commissioner to implement the provisions of Local Law No. 149 of 2013 (“the Local Law”), which establishes new requirements for recordkeeping by pawnbrokers and certain second-hand dealers in New York City. Sections 21-10 and 21-11 of this Chapter generally codify certain, long-standing written recordkeeping requirements and address related administrative inspections.

§ 3. Section 21-02 of Chapter 21 of Title 38 of the Rules of the City of New York is amended to read as follows:

#### **§ 21-02 Definitions.**

**Dealer in Second-Hand Articles.** “Dealer in Second-Hand Articles” or “Second-Hand Dealer” means a dealer in second-hand articles as such person is defined in Section 20-264 of the New York City Administrative Code.

**Dealer Subject to Electronic Recordkeeping Requirements.** “Dealer Subject to Electronic Recordkeeping Requirements” means a dealer in second-hand articles who deals in: (1) the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum, or other precious metals; the purchase or sale of any old gold, silver, platinum or other precious metals; the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining; the purchase or sale of used electrical appliances excluding kitchen appliances; the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers; or (2) the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, where the second-hand dealer is not a pawnbroker.

**Computer.** “Computer” means a device which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to an ordered set of data representing coded instructions or statements, can automatically perform arithmetic, logical, storage or retrieval operations, including but not limited to a tablet, laptop, desktop, gaming system, e-reader, MP3 player, or smartphone.

**Electronic Equipment.** “Electronic Equipment” means a device capable of recording, storing, playing or displaying digital media, including but not limited to a tablet, laptop, desktop, gaming system, e-reader, MP3 player, cellphone, smartphone, or any other electronic device capable of voice communication.

**IMEI Number.** “IMEI Number” means International Mobile Equipment Identity number.

**Member of the Police Department.** “Member of the Police Department” means a sworn officer of the New York City Police Department (NYPD).

**Pawnbroker.** “Pawnbroker” means a collateral loan broker as defined in Section 52 of the New York State General Business Law.

**Police Commissioner.** “Police Commissioner” means the Commissioner of the New York City Police Department.

**Second-Hand Articles Store Log.** “Second-Hand Articles Store Log” means the blank, triplicate form furnished by the Police Department to pawnbrokers and second-hand dealers pursuant to New York City Administrative Code §§ 20-267 and 20-277.

§ 4. Chapter 21 of Title 38 of the Rules of the City of New York is amended by adding two new sections 21-10 and 21-11 to read as follows:

**§ 21-10 Compliance with Written Record-Keeping and Reporting Requirements.**

(a) A member of the Police Department must provide each pawnbroker and second-hand dealer with a Second-Hand Articles Store Log and a copy of instructions.

(b) A member of the Police Department must visit each business maintaining a Second-Hand Articles Store Log at least once every ten days to obtain a copy of the records from the Second-Hand Articles Store Log. Each visit by such member must be documented by the member in the appropriate portion of the Second-Hand Articles Store Log.

(c) This section shall not apply to any pawnbroker or second-hand dealer that, to the satisfaction of the Police Department, uploads complete electronic records of transactions, including the information that would otherwise be required to be kept in the Second-Hand Articles Store Log, on a daily basis to a web-based electronic data transfer service designated by the Police Commissioner.

### **§ 21-11 Administrative Inspections.**

(a) Members of the Police Department must conduct administrative inspections of each pawnbroker and second-hand dealer to ensure compliance with the record-keeping and reporting requirements set forth in the New York City Administrative Code and New York State General Business Law. These inspections must occur regularly, and in no event less often than once per quarter during the calendar year. In conducting these inspections, a member of the Police Department must:

(1) Request to see the last twenty articles purchased or received in pledge by the pawnbroker or second-hand dealer that are still in inventory, which articles must be produced by the pawnbroker or second-hand dealer;

(2) Compare the articles to the description of such articles listed in the Second-Hand Articles Store Log or the electronic record maintained pursuant to Sections 21-03 and 21-04 of this Chapter; and

(3) Review the entry for each of these twenty items in the Second-Hand Articles Stores Log or electronic record for completeness, accuracy and legibility.

(b) Pawnbrokers or second-hand dealers, including their employees, refusing to comply with an inspection conducted pursuant to this rule may be subject to civil as well as criminal penalties under the applicable provisions of local or state law.

## STATEMENT OF BASIS AND PURPOSE OF RULE

Pawnbrokers and second-hand dealers in New York City are licensed by the Department of Consumer Affairs (“DCA”), and their record-keeping and reporting practices are monitored by both DCA and the New York City Police Department (“NYPD”). Pawnbrokers and second-hand dealers are closely regulated in New York City, and it is vitally important to ensure that accurate and complete records are maintained by these businesses. Among other requirements, pawnbrokers and second-hand dealers must maintain records and report information about their transactions pursuant to the New York City Administrative Code and the New York State General Business Law.

NYPD has adopted the following rule to generally codify its practices for conducting administrative inspections of pawnbrokers and second-hand dealers to ensure their compliance with record-keeping and reporting requirements. The rule:

- Defines a Second-Hand Article Store Log, a set of forms that pawnbrokers and second-hand dealers are required to complete pursuant to reporting requirements set forth in the New York City Administrative Code and this chapter;
- Sets forth procedures for obtaining completed Second-Hand Article Store Logs by the NYPD from pawnbrokers and second-hand dealers; and
- Generally codifies NYPD practices for conducting administrative inspections of pawnbrokers and second-hand dealers to ensure that the transactional information reported by these businesses is complete, accurate, and legible.

After reviewing comments received at the hearing and in writing, the NYPD is adopting the rule with the change that the administrative inspections must occur regularly and in no event less often than once per quarter during the calendar year as well as certain clarifying changes designed to ensure that the rule accurately sets forth the scope and application of reporting requirements and inspection provisions.

The laws that require pawnbrokers and second-hand dealers to report information about their transactions and that authorize inspection of these businesses and their records are the subject of currently pending litigation. Although a trial court issued a preliminary injunction prohibiting enforcement of many of these laws, that decision was stayed by an appellate court. *See Collateral Loanbrokers Assn. of New York, Inc. v. City of New York*, No. M-3147 (1st Dep’t Aug. 4, 2015); *Collateral Loanbrokers Assn. of New York, Inc. v. City of New York*, 18 N.Y.S.3d 578 (Sup. Ct. Bronx Cnty June 3, 2015). NYPD therefore remains responsible for enforcing these laws while the litigation is pending.