

## NEW YORK CITY POLICE DEPARTMENT

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The New York City Police Department (“NYPD”) is proposing a new rule to codify its practices for conducting administrative inspections of pawnbrokers and second-hand dealers to ensure their compliance with record-keeping and reporting requirements. The change would amend Chapter 21 of the Department’s rules by amending § 21-01, adding new definitions to § 21-02 and adding two new sections, §§ 21-10 and 21-11, to the Chapter.

**When and where is the hearing?** The NYPD will hold a public hearing on the proposed rules. The public hearing will take place at 10:00 AM to 12:00 PM on Friday, July 22, 2016. The hearing will be held in the Police Department’s Auditorium located at One Police Plaza, First Floor, New York, New York 10038

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Police Department through the NYC rules Web Site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@nypd.nyc.gov](mailto:nycrules@nypd.nyc.gov).
- **Mail.** You can mail written comments to the Police Department City of New York, Commanding Officer, Legal Bureau, One Police Plaza, Room 1406, New York, NY 10038.
- **Fax.** You can fax written comments to the Police Department City of New York, Commanding Officer, Legal Bureau, at 646-610-8377.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 646-610-5400. You can also sign up in the hearing room before the hearing begins on July 22, 2016. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by July 22, 2016.

**Do you need assistance to participate in the hearing?** You must tell the NYPD Legal Bureau if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 646-610-5400. You must tell us by July 15, 2016.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Legal Bureau.

**What authorizes the NYPD to make these rules?** Section 1043 and 435 of the City Charter and §§ 20-267, 20-273 and 20-277 of the New York City Administrative Code authorize the Police Department to make these proposed rules. These proposed rules were not included in the Police Department’s regulatory agenda because the need for them was not anticipated at the time of the agenda’s publication.

**Where can I find the NYPD’s rules?** The Police Department’s rules are in Title 38 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Police Department must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

### STATEMENT OF BASIS AND PURPOSE

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 is proposing 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 would:

- Define 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;
- Set forth procedures for obtaining completed Second-Hand Article Store Logs by the Police Department from pawnbrokers and second-hand dealers; and
- Generally codify 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.

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, and this rulemaking serves that end.

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.

**§ 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 month. 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 issuance of a summons under the applicable provisions of local or state law.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Recordkeeping Requirements for Pawnbrokers and Second-Hand Dealers**

**REFERENCE NUMBER: NYPD-8**

**RULEMAKING AGENCY: New York Police Department**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

June 14, 2016  
Date

**NEW YORK CITY LAW DEPARTMENT  
DIVISION OF LEGAL COUNSEL  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE:** Recordkeeping Requirements for Pawnbrokers and Second-Hand Dealers

**REFERENCE NUMBER:** 2016 RG 057

**RULEMAKING AGENCY:** New York City Police Department

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: June 13, 2016