TOWN OF GILFORD, NEW HAMPSHIRE

AN ORDINANCE
REGULATING PAWNBROKERS
&
THE LICENSING OF DEALERS WHO SELL SECONDHAND ARTICLES

(CHAPTER 27-A)

KNOW ALL PERSONS BY THESE PRESENTS, the Gilford Board of Selectmen hereby ordains to adopt this **amended** Ordinance Regulating Pawnbrokers and the Licensing of Dealers Who Sell Secondhand Articles within the corporate limits of the Town of Gilford **as previously adopted on March 28, 2012**.

27-A.1 AUTHORITY

This Ordinance is adopted pursuant to the authority granted under RSA 41:11-c, 322, and 398; whereby the provisions of each referenced statute shall be incorporated herein and made a part of this Ordinance. Furthermore, the Selectmen have been authorized to adopt this Ordinance pursuant to a majority vote on Article 24 of the March 13, 2012, Annual Town Meeting.

27-A.2 PURPOSE

(a) The primary intent of this Ordinance is to establish a system which fairly and impartially regulates the sale of secondhand articles by dealers and pawnbrokers for the purpose of:

1) Identifying stolen property that may be unintentionally received by such dealers and pawnbrokers; and

2) Deterring and preventing the sale of stolen goods, insomuch as possible.

(b) In addition, this Ordinance is intended to aid law enforcement personnel in their duty to apprehend and prosecute any person who facilitates the possession and/or sale of stolen goods, while also enabling the return of stolen property to the rightful owners.

27-A.3 DEFINITIONS

(a) AUCTION shall mean the sale of real or personal property, or both, in which the sale price of the property offered is increased by competitive bids, regardless of the method, until the highest accepted bidder becomes the purchaser.

(b) BUYER shall mean any person (other than a secondhand dealer or pawnbroker) who has purchased or otherwise obtained custody, (whether temporarily or permanently) of secondhand articles, used goods, old junk, scrap metals, or unwanted personal property. This definition shall also refer to any person who acquires such goods from a secondhand dealer or pawnbroker as a gift or in lieu of some other form of compensation that may have been due.

(c) CONSIGNMENT shall mean any transaction where a person places goods into the custody of another but retains ownership until such time as the goods are sold or transferred to another person.

(d) PAWNBROKER shall mean any person, firm, partnership, or corporation engaged in the business of lending money or other goods secured by taking possession of personal property with the understanding that such property may be sold, transferred, or redeemed under certain terms and conditions.

(e) SECONDHAND DEALER shall mean any person, firm, partnership, or corporation engaged in the business of buying, selling, exchanging, or dealing in any way with secondhand articles, used goods, old junk, scrap metals, or unwanted personal property; regardless of the number of transactions (frequency of sales shall not be relevant) or the location where such sales take place, (having a dedicated shop, or store and the use of residential property shall not be relevant). This definition shall include all persons who conduct business in the sale of unwanted personal property at a flea market, antique shop, coin show, gun show, jewelry show, refinery reclamation drive, transient dealers in precious gems, metals, and/or memorabilia, and any jewelry store whose gross sales of used items exceeds twenty-five percent (25%) of total receipts per day (on average).

(f) SELLER shall mean any person who has relinquished or is intending to relinquish custody, (whether temporarily or permanently) of secondhand articles, used goods, old junk, scrap metals, or unwanted personal property by means of offering for sale, consignment, barter, loan, exchange, or to hold as security.

27-A.4 LICENSES REQUIRED

(a) No person shall engage in business as a secondhand dealer or pawnbroker unless such person shall first obtain a license from the Board of Selectmen.

(b) All employees and/or subcontractors who engage in business as a secondhand dealer or pawnbroker on behalf of a firm, partnership, or corporation must first obtain a license from the Board of Selectmen prior to conducting any such business transactions.

27-A.5 LICENSE APPLICATIONS & ISSUANCE PROCEDURES

(a) Applications for new licenses and renewal licenses for a secondhand dealer or pawnbroker shall be made in writing to the Office of the Selectmen on forms provided for this purpose by the Town of Gilford; (see attached Appendix I).

(b) License applications shall be reviewed by the Town Administrator, Police Chief, Fire Chief, and Director of Planning & Land Use (or their designees) upon receipt of a completed application for up to thirty (30) days prior to submission to the Board of Selectmen. Each Town Official shall make an independent recommendation as to whether a license should be approved or denied; however, the final decision is at the sole discretion of the Board of Selectmen.

(c) Under no circumstances shall a license be issued for any establishment or premises that are operating in a manner that is not in compliance with the Town of Gilford Zoning Ordinance, Building Code, or Fire Code.

(d) Under no circumstances shall a license be issued for an employee or subcontractor of a firm, partnership, or corporation that is not registered to do business with the NH Secretary of State.

(e) Under no circumstances shall a license be issued to any person who has been previously convicted of a felony, burglary, larceny, theft, fraud, or any crime involving receipt of stolen property, in this state or any other state or territory of the United States. Furthermore, no license shall be issued to any person who has been convicted in a court of law for a violation of this Ordinance as otherwise set forth in Section 27-A.5(h) of this Ordinance.

(f) The Gilford Board of Selectmen shall vote at a duly posted, public meeting to consider the approval or denial of a license for a secondhand dealer or pawnbroker, upon a determination that the application is complete. Nothing in this Ordinance is intended to require any member of the Board of Selectmen to vote to approve such a license if a Selectman is opposed to the issuance for any lawful reason, provided, however, that no Selectman who has a financial interest in any existing business or establishment with a secondhand dealer or pawnbroker license shall participate in the deliberations or vote on a license application.

(g) A final decision on the issuance or denial of a license shall be rendered by the Board of Selectmen in writing within twenty-one (21) days of the application reviews being completed by Town staff. In the event that the Town takes no action on a complete application within fifty-one (51) days of submittal, the applicant shall be deemed to have an unconditional license in effect for a period of thirty (30) days.

(h) Upon approval of the Board of Selectmen and payment of the fee as noted in Section 27-A.10 of this Ordinance, a license shall be issued to a specific person and shall only be valid at a specified location in accordance with the terms and conditions as otherwise set forth herein.

27-A.6 LICENSE REVOCATIONS

(a) The Chief of Police may suspend or revoke a license upon a finding that the licensee has knowingly and repeatedly violated this Ordinance after issuing a written warning for non-compliance. This action will be stayed if an appeal is filed.

(b) A licensee who is aggrieved by a decision of the Police Chief to suspend or revoke a license may file an appeal to the Board of Selectmen within thirty (30) days of such action, in which case the Selectmen shall then have twenty-one (21) days to schedule a public hearing, as otherwise set forth above in Section 27-A.6(c).

(c) Notwithstanding the authority of the Police Chief to revoke a license as noted above in Section 27-A.6(a) of this Ordinance, the Town Administrator shall notify a licensee of the Selectmen's intentions to hold a public hearing on the revocation of a license in writing at least fourteen (14) days in advance, at the sole convenience of the Selectmen. Such notice shall include a summary of the reasons that revocation will be considered; however, nothing herein is intended to prohibit the consideration of additional causes for revocation that may be introduced at the hearing.

(d) Public hearings to consider an appeal or the revocation or suspension of a license issued under this Ordinance shall be governed by the provisions of RSA Chapter 43.

(e) The Board of Selectmen may revoke or suspend a license upon a finding that (i) the applicant or licensee has provided false information on the application; or (ii) the licensee has violated any of the regulations set forth in this Ordinance, (to include the provisions of RSA 322 & 398).

(f) Upon the conclusion of a hearing, the Board of Selectmen may take the following action:

1) Allow the license to remain in effect;

2) Determine that the license shall be reinstated after a period of suspension not to exceed ninety (90) days; or

3) Determine that the license shall be revoked for the remainder of its term, in which case that person shall then be ineligible to re-apply for a license for two years (for a first offense) or on a permanent basis (for any subsequent offense), as otherwise noted in Section 27-A.6(h) of this Ordinance.

(g) Any person aggrieved by the suspension, revocation or reinstatement of a license may petition a court of competent jurisdiction for such relief as may be deemed necessary.

(h) Any person who has pled guilty or been found guilty by a court of competent jurisdiction for violating any provision of this Ordinance shall automatically have their license as a secondhand dealer and/or pawnbroker revoked; and that person shall not be eligible for a new license for a period of two years from the date of conviction or guilty plea. Furthermore, any subsequent convictions or revocations shall result in that person being permanently ineligible for a license under this Ordinance.

27-A.7 REGULATIONS

(a) Upon approval by the Board of Selectmen, a license shall be issued and continue in force until April 1 next following, unless sooner revoked. (Licensees are strongly encouraged to apply for a renewal at least 30 days in advance of the April 1 expiration.)

(b) A license issued under this Ordinance must be clearly and prominently displayed at all times in the location where business transactions are permitted to take place.

(c) Licenses shall not be assigned or transferred to any other person or location.

(d) No licensed secondhand dealer or pawnbroker shall directly or indirectly purchase any secondhand articles, used goods, old junk, scrap metals, or unwanted personal property from anyone under 18 years old, except when said minor is accompanied by a parent or legal guardian, who shall be required to sign a transaction record in person before the licensee.

(e) No licensed secondhand dealer or pawnbroker shall directly or indirectly purchase any secondhand articles, used goods, old junk, scrap metals, or unwanted personal property from any person who appears to be visibly intoxicated or under the influence of alcohol or drugs.

(f) No licensed secondhand dealer or pawnbroker shall knowingly purchase any secondhand articles, used goods, old junk, scrap metals, or unwanted personal property that has been stolen. Furthermore, every secondhand dealer and pawnbroker shall have a duty to exercise such reasonable care as may be necessary to ensure that the goods they are accepting have not been stolen.

(g) Every secondhand dealer and pawnbroker, upon the acquisition of any secondhand articles, used goods, old junk, scrap metals, or unwanted personal property, shall complete a transaction record that includes the following information and documentation:

1) The full name of the seller who has relinquished custody of goods to a secondhand dealer or pawnbroker, including their mailing address, residential address, government issued ID type and number, and telephone number; along with a photocopy or picture of the government issued identification;

2) The date and time of all business transactions pertaining to each article that is accepted, transferred, sold, consigned, bartered, loaned or exchanged;

3) A full, accurate, and detailed description (to include make, model, serial number, size, shape, engravings or other distinguishing markings) of each article to be sold, consigned, bartered, loaned or exchanged; along with pictures of each article of such resolution as to make each item clearly identifiable;

4) The full name of the buyer who has **purchased** goods from the secondhand dealer or pawnbroker, **(in hand or via an internet sale)** including their mailing address, residential address, **email address**, **online user name (if applicable)**, government issued ID type and number, and telephone number; along with a photocopy or picture of the buyer's government issue identification; or in lieu thereof, the name and address of any secondhand dealer or pawnbroker to whom the article was transferred.

5) A seller shall be furnished a written receipt by the buyer for all transactions that includes a signed statement (pursuant to RSA 641:3) acknowledging the goods being sold are not stolen. This receipt shall also state the name and address of the buyer/licensee, the agreed upon value of the item with a description thereof, and the details of any loan terms (if applicable).

6) All transaction records shall be legibly written in the English language.

(h) All transaction records shall be retained for a minimum period of one year; during which time they shall be made available for inspection by any duly sworn police officer; whereby such inspections shall be required as a condition of a license issued under this Ordinance without the need for any warrant or demonstration of reasonable suspicion or probable cause as otherwise set forth in RSA 322:7 and 398:13. In addition, transaction records shall be made available to any potential buyer upon request and information from transaction records shall be electronically submitted to the Gilford Police

Department on a weekly basis in such form and detail as may be required by the Police Chief or his/her designee.

(i) No secondhand dealers shall sell, transfer custody, encumber by sale, contract, alter in appearance, or otherwise dispose of any secondhand articles, used goods, old junk, scrap metals, or unwanted personal property within fifteen (15) days of acquisition, unless granted permission in writing from the Chief of Police (or his designee).

(j) All secondhand articles, used goods, old junk, scrap metals, or unwanted personal property items that are acquired by a secondhand dealer shall remain secured on-premises and available for public viewing (but not for sale) during the fifteen (15) day waiting period, unless they are relinquished to the original seller, in which case such buyback activity shall be noted in the official transaction record.

(k) Articles deposited in pawn with a licensed pawnbroker shall, unless redeemed by the original seller, be retained by the pawnbroker on the licensed premises for at least four (4) months after the date of deposit, if not of a perishable nature; and if of a perishable nature, one (1) month after said date.

(l) All secondhand articles, used goods, old junk, scrap metals, or unwanted personal property items that are intended to be sold at auction by a secondhand dealer or pawnbroker shall be subject to terms and conditions set forth in this Ordinance in addition to the applicable provisions of RSA 311-B.

(m) Copies of this Ordinance shall be provided by the Town to licensees in sufficient quantities upon reasonable request to ensure that they are available to any potential buyer and that they are in plain view at all times during business hours.

(n) Licensees shall be required to post a sign in a conspicuous place next to the license that clearly states "THIS ESTABLISHMENT DOES NOT BUY OR SELL STOLEN GOODS – ALL SALES ARE RECORDED AND ALL TRANSACTIONS REQUIRE A GOVERNMENT ID". Letters for such signs shall be no less than two inches in height in a color that contrasts with the background.

(o) In the event a licensee has installed electronic monitoring or recording equipment on the business premises, such devices shall be kept operational at all times, to the extent reasonably practicable, and an archive of all recordings shall be kept for a minimum of sixty (60) days; during which time they shall be made available for inspection by any duly sworn police officer; whereby such inspections shall be required as a condition of a license issued under this Ordinance without the need for any warrant or demonstration of reasonable suspicion or probable cause.

27-A.8 PENALTIES

(a) Notwithstanding the separate license suspension and/or revocation proceedings as otherwise set forth herein, any person who fails to comply with this Ordinance shall

be guilty of a violation and shall be subject to a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000.00) as may be determined by a court of competent jurisdiction.

(b) Each day (or portion thereof) of non-compliance and each different infraction of a regulation as set forth in this Ordinance shall constitute a separate violation.

27-A.9 ENFORCEMENT

(a) Any duly sworn police officer is hereby given authority to enforce the provisions of this Ordinance; and to take action in any court of competent jurisdiction within the State of NH in order to impose and collect such fines as may otherwise be due; and furthermore, such officials are also authorized to seek injunctive relief to prevent future violations, as set forth in RSA 322:5.

(b) In the event that a police officer has reasonable cause to believe any item for sale by a licensed secondhand dealer or pawnbroker is stolen property, such item may be seized upon presentation of a valid warrant, unless voluntarily relinquished by the licensee, in which case the police officer shall issue a receipt for the article. Such property shall be held in the custody of the law enforcement agency in accordance with the applicable retention and disposition procedures established by law. It shall be a violation of this Ordinance for any person to attempt to dispose or transfer custody of an item or alter its appearance upon order of a police officer to set aside such property until a warrant is obtained.

(c) It shall be a violation of this Ordinance for any licensee to hinder or fail to fully cooperate with an investigation by a police officer into the business conduct of a secondhand dealer or pawnbroker, including, but not limited to providing reasonable access to transaction records, financial books, and inventories related to the buying, selling, exchanging, consignment, loan, collateralization, or dealing in any way with secondhand articles, used goods, old junk, scrap metals, or unwanted personal property.

27-A.10 FEES

(a) The fee for each license shall be fifty dollars ($50.00) payable at the time of issuance.

(b) Under no circumstances shall the Town issue a refund for the suspension, revocation or relinquishing of any license issued under this Ordinance, unless otherwise approved by the Board of Selectmen at a duly posted, public meeting upon written request of the licensee for extenuating circumstances.

27-A.11 EXEMPTIONS

(a) Except as otherwise required by law, this Ordinance shall not apply to the following activities:

1) Yard sales that have been issued a permit by the Gilford Police Department;

2) Private sales of personal property that is owned by the seller, to include private sales on behalf of the owner by any person who is not engaged in business as a secondhand dealer;

3) The sale of food, beverages, books, furniture, motor vehicles, mechanical replacement parts by junk yards or repair shops, or real property;

4) Governmental events sponsored by a municipality, county, state, federal or village district entity;

5) Mail-order transactions or retail stores that exchange or provide cash or credit for returned articles;

6) Tickets sold for entertainment, sporting, political, or other special events;

7) Charitable activities that are operated by a non-profit entity, provided that the seller is either designated a 501(c)3 by the IRS or registered with the NH Division of Charitable Trusts;

8) Religious activities by an organization that would otherwise qualify for a tax exemption under the provisions of RSA 72:23, III;

9) School events that have been authorized under rules and regulations as otherwise set forth in RSA Title XV;

10) Craft sales or the sale of other items by persons who hold a valid Hawkers and Peddlers License pursuant to RSA 31:102-a or a Vendor's Permit pursuant to the Town of Gilford Ordinance Regulating Outdoor Vendors and Transient Sales (Chapter 27);

11) Transaction records shall not be required for any item that is bought and sold for under ten dollars ($10.00).

(b) The Board of Selectmen may, at its sole discretion, for good cause, grant a waiver from any of the terms and conditions set forth in this Ordinance, upon a determination that strict compliance will pose an undue hardship and that such an exemption will not adversely affect public safety.

27-A.12 SEVERANCE

The provisions of this Ordinance shall be severable, and if any phrase, clause, sentence, or provision of these regulations shall for any reason be held invalid or unconstitutional, the validity of the remainder of these regulations shall not be affected thereby.

27-A.13 EFFECTIVE DATE

This Ordinance shall **remain in** effect as of May 1, 2012; and shall apply to any person engaged in business as a secondhand dealer or pawnbroker in the Town of Gilford, regardless of whether or not they were operating in such a capacity on or before the effective date.

IN WITNESS WHEREOF, this Ordinance Regulating Pawnbrokers and the Licensing of Dealers Who Sell Secondhand Articles is hereby adopted and approved on the 10th day of October, 2018 by the Gilford Board of Selectmen, upon the convening of a public hearing and deliberations during a duly posted, public meeting of the Gilford Board of Selectmen held on the 28th day of MARCH, 2012; to be effective as otherwise noted herein. ATTEST:

_____
Gus Benavides, Selectman - Chair

_____
Richard Grenier, Selectman - Vice-Chair

_____
Dale Channing Eddy, Selectman - Clerk

UNDER SEAL OF THE TOWN, RECEIVED AND RECORDED ON THIS _____ DAY OF _____, 20____, BY:

_____
(Office of the Town Clerk – Tax Collector)

APPENDIX I
TOWN OF GILFORD, NH
PAWNBROKER & SECONDHAND DEALER
LICENSE APPLICATION

DATE: _____

APPLICANT INFORMATION:

NAME OF APPLICANT: _____

TITLE: _____

BUSINESS NAME: _____

BUSINESS ADDRESS: _____

MAILING ADDRESS: _____

TAX MAP/LOT: _____

PHONE NUMBERS: _____

EMAIL: _____

TAXPAYER ID/SSN: _____

TYPE OF BUSINESS: (CHECK ALL THAT APPLY)

[ ] PAWNBROKER
[ ] SECONDHAND DEALER
[ ] SELF-PROPRIETOR
[ ] PARTNERSHIP
[ ] LLC
[ ] CORPORATION

IS THE BUSINESS REGISTERED WITH THE NH SECRETARY OF STATE?

[ ] NO/NOT APPLICABLE
[ ] YES (ATTACH COPY)

ARE YOU REQUESTING A WAIVER FROM ANY OF THE REGULATIONS SET FORTH IN THE ORDINANCE REGULATING PAWNBROKERS & THE LICENSING OF DEALERS WHO SELL SECONDHAND ARTICLES?

[ ] NO
[ ] YES _____

IS THERE A VALID OCCUPANCY PERMIT FOR THE PREMISES?

[ ] NO/NOT APPLICABLE/GRANDFATHERED
[ ] YES (ATTACH COPY)

IS THERE A VALID PLACE OF ASSEMBLY PERMIT FOR THE PREMISES?

[ ] NO/NOT APPLICABLE
[ ] YES (ATTACH COPY)

IS THERE A VALID SITE PLAN APPROVAL FROM THE TOWN FOR THE ACTIVITIES THAT ARE PLANNED TO TAKE PLACE?

[ ] NO/NOT APPLICABLE/GRANDFATHERED
[ ] YES – DATE ISSUED: _____

PROVIDE A DETAILED DESCRIPTION OF THE TYPES OF ITEMS THAT WILL BE SOLD ON THE PREMISES: (ATTACH A SEPARATE SHEET IF NECESSARY)

_____

_____

_____

_____

_____

DOES THE BUSINESS (OR CONTACT PERSON LISTED ON PAGE 1) OWN THE PREMISES OR LEASE?

[ ] OWN
[ ] LEASE OWNER'S NAME _____
OWNER'S ADDRESS _____
OWNER'S PHONE/EMAIL _____

HAVE YOU EVER BEEN CONVICTED OF (OR PLED GUILTY TO) A FELONY, BURGLARY, LARCENY, THEFT, FRAUD, OR ANY CRIME INVOLVING RECEIPT OF STOLEN PROPERTY?

[ ] NO
[ ] YES _____

HAVE YOU EVER HAD A PAWNBROKER OR SECONDHAND DEALER LICENSE DENIED, SUSPENDED OR REVOKED BY THE TOWN OF GILFORD OR ANY OTHER GOVERNMENTAL ENTITY?

[ ] NO
[ ] YES _____

"I hereby acknowledge that I have read and understand the Town of Gilford Ordinance Regulating Pawnbrokers & The Licensing of Dealers Who Sell Secondhand Articles and that I intend to fully comply with the regulations. I realize that failure to comply may result in the revocation of my License and/or the imposition of fines. Furthermore, I hereby agree to indemnify, hold harmless and release the Town of Gilford and its agents from any claims, liability, injuries and damages that may result from the issuance, suspension, or revocation of my License. I certify that I am the person listed on this application form and that I agree to be held accountable hereunder for all enforcement purposes related thereto. Lastly, I promise that I will promptly inform the Town of Gilford, Office of the Selectmen of any changes to the information that I have provided in this application, should the need arise due to changes in business operations, my employment status, or if I discover any inadvertent errors or omissions."

_____ Print Name

_____ Title

_____ Signature

_____ Date

****

↓ FOR TOWN USE ONLY ↓

Date Received: _____ Amount Paid: _____

Date that Application is determined to be complete: _____ by_____

Department Recommendations/Approvals:

Fire Chief	[ ] YES	[ ] NO	[ ] SEE ATTACHED	by_____
Planning Director	[ ] YES	[ ] NO	[ ] SEE ATTACHED	by_____
Police Chief	[ ] YES	[ ] NO	[ ] SEE ATTACHED	by_____
Town Administrator	[ ] YES	[ ] NO	[ ] SEE ATTACHED	by_____

Date(s) Reviewed by Board of Selectmen: _____

Final Decision of Board of Selectmen: [ ] APPROVE [ ] DENY

Issue Date: _____ Expiration Date: _____

Signature of Selectman: _____

Signature of Selectman: _____

Signature of Selectman: _____