

COMMON COUNCIL
OF THE
CITY OF MEQUON

ORDINANCE 2020-1564

An Ordinance Repealing and Recreating Article III, Chapter 14 of the Mequon Municipal Code,
in Connection with the Licensing of Various Second-Hand Resale Establishments

RECITALS

A. The Common Council previously created Article III of Chapter 14 of the Mequon Municipal Code which regulates auctions and secondhand stores within the City.

B. The Common Council wishes to amend Article III of Chapter 14 to provide more clarity with respect to the licensing of secondhand establishments and modernize the record keeping requirements.

C. The regulation of secondhand dealers promotes the health, welfare and safety of the community.

BASED UPON THE FOREGOING, THE COMMON COUNCIL OF THE CITY OF MEQUON, OZAUKEE COUNTY, STATE OF WISCONSIN, DO ORDAIN AS FOLLOWS:

SECTION I

Article III of Chapter 14 of the Mequon Municipal Code is repealed and recreated to read as shown in Exhibit A.

SECTION II

The terms and provision of this ordinance are severable. Should any term of provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION III

All ordinances and parts of ordinances in contravention to this ordinance are hereby repealed.

SECTION IV

This ordinance shall be in full force and effect upon its passage and on the day after its publication.

EXHIBIT A

ARTICLE III. - AUCTIONS AND SECONDHAND STORES

Sec. 14-51. - Definitions. As used in this chapter, the following terms shall have the meanings indicated:

- (1) “Adequate Identification” means any one of the following:
 - (a) A valid Wisconsin motor vehicle operator's license;
 - (b) A valid Wisconsin state identification card;
 - (c) A valid government-issued passport;
 - (d) A military identification card;
 - (e) A valid motor vehicle operator's license, containing a picture, issued by another state.

- (2) “Architectural Salvage and Dealer” means any person, other than an auctioneer, who engages in any business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand home improvement and building materials including kitchen cabinets, doors, windows, flooring, unused lumber, lighting fixtures, fencing, bricks/blocks, and the like, who is not a pawnbroker as defined under this section.

- (3) “Article” means any of the following:
 - (a) Audiovisual equipment;
 - (b) Bicycles;
 - (c) China;
 - (d) Clothing and accessories including shoes, sunglasses, and handbags;
 - (e) Computers, printers, software, and computer supplies;
 - (f) Computer toys and games;
 - (g) Crystal;
 - (h) Electronic equipment and appliances;
 - (i) Firearms, knives, and ammunition;
 - (j) Fur coats and other fur clothing;
 - (k) Furniture;
 - (l) Jewelry containing precious metals or precious stones;
 - (m) Office equipment;
 - (n) Pianos, organs, guitars and other musical instruments;
 - (o) Silverware and flatware;

- (p) Telephones;
- (q) Video discs and other optical media;
- (r) Coins, bullion;
- (s) Metal, mineral, or gem customarily regarded as precious or semiprecious;
- (t) Golf clubs, racquets, skis, snowboards, canoes, kayaks, SCUBA equipment;
- (u) Snow removal and lawn equipment;
- (v) Motors;
- (w) Paper money;
- (x) Tools;
- (y) Sports memorabilia with a resale value greater than \$100.00.

(4) “Auctioneer” means any person registered as an auctioneer under Chapter 480 of the Wisconsin Statutes.

(5) “Charitable Organization” means a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(6) “Customer” means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer, or an agent thereof, engages in a transaction of purchase, sale, receipt, or exchange of any secondhand article or secondhand jewelry.

(7) “Pawnbroker” means any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchases any article or jewelry with an expressed or implied agreement of understanding to sell it back at a subsequent time at a stipulated price.

(8) “Person in Charge” means an employee who has undergone the background check requirements of § 14-53 of the Municipal Code.

(9) “Reportable Transaction” refers to every transaction conducted by a secondhand article dealer or secondhand jewelry dealer in which an article or articles are received by a secondhand article dealer or secondhand jewelry dealer through purchase, consignment, or trade, or for which a unique transaction number or identifier is generated by their point-of-sale software, or an item is confiscated by law enforcement, except:

- (a) The bulk purchase or consignment of new or used articles from a merchant, manufacturer, or wholesaler having an established permanent place of business, and the subsequent retail sale of said articles, provided the secondhand article dealer or secondhand jewelry dealer must maintain a record of such purchase or consignment that describes each item, and must mark each item in a

manner that relates it to that transaction record.

(b) Retail and wholesale sales of articles originally received by secondhand article dealers or secondhand jewelry dealers by purchase, and for which all applicable hold and/or redemption periods have expired.

(c) For transactions at Secondhand Article Dealers except Secondhand Numismatic Dealers, any transaction involving clothing offered for sale at less than \$200 or any other Article which is offered for sale at less than \$100.

(10) “Resale Clothing and Clothing Accessory Dealer” means any person, other than an auctioneer, who engages in any business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand clothing, furs, shoes, handbags, sunglasses, and/or other accessories, who is not a pawnbroker as defined under this section.

(11) “Resale Furniture and Household Merchandise Dealer” means any person, other than an auctioneer, who engages in any business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand furniture, china, tools, and/or snow removal and lawn equipment, who is not a pawnbroker as defined under this section.

(12) “Secondhand Article” means an item identified under the definition of "article," owned by any person, except a wholesaler, retailer, or licensed secondhand article dealer or secondhand jewelry dealer, immediately before the transaction at hand.

(13) “Secondhand Article Dealer” includes a Secondhand Numismatic Dealer, Resale Clothing and Clothing Accessory Dealer, Resale Furniture and Household Merchandise Dealer, and/or Architectural Salvage and Dealer.

(14) “Secondhand Jewelry Dealer” means any person, other than an auctioneer, who engages in any business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand jewelry, or metals, minerals, or gems customarily regarded as precious or semiprecious, who is not a pawnbroker as defined under this section.

(15) “Second Hand Numismatic Dealer” means any person, other than an auctioneer, who engages in any business of any transaction consisting of purchasing, selling, receiving, or exchanging secondhand coins, bullion, or paper money, who is not a pawnbroker as defined under this section.

Sec. 14-52. - Licensing.

(1) License Required. No person may engage in business of selling secondhand articles in the City of Mequon without first having obtained a license under this section.

(2) Licenses Established. The following classes of licenses shall exist within the City of Mequon:

(a) Secondhand Jewelry Dealer.

(b) Secondhand Numismatic Dealer.

- (c) Resale Clothing and Clothing Accessory Dealer.
 - (d) Resale Furniture and Household Merchandise Dealer.
 - (e) Architectural Salvage and Dealer.
 - (f) Auctioneer.
 - (g) Any sale of secondhand articles not authorized by the licenses established above, including engaging in the business of a pawnbroker, shall not be permitted within the City.
- (3) License Quotas. Except for Secondhand Jewelry Dealer licenses and Auctioneer licenses, there shall be no more than four (4) of each class of license issued at any time. There shall be no quota for Auctioneer and Secondhand Jewelry Dealer licenses.
- (4) Exceptions. The requirements of this section do not apply to the following:
- (a) Transactions involving occasional garage or yard sales, estate sales, coin, gem, antique or stamp shows, conventions or auctions.
 - (b) Transactions entered into by a person engaged in the business of junk collector, junk dealer, or scrap processor, as described in § 70.995(2), Wis. Stats.
 - (c) Transactions between pawnbrokers or secondhand dealers licensed under this section.
 - (d) Any transaction between a buyer of a new article or jewelry and the person who sold the article or jewelry when new which involves a return or exchange of the article or jewelry for a different, new article or jewelry.
 - (e) Any transaction as a purchaser or seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.
 - (f) Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.

Sec. 14-53. - Application for and Issuance of Licenses.

- (1) *Application.* Any person seeking to obtain a license to conduct business as a secondhand article dealer or secondhand jewelry dealer must submit an application to the City Clerk. The Clerk shall provide the applicant with application forms approved by the Police Department.
- (2) *Issuance of license.*
- (a) The City shall grant the license if the applicant, including an individual, a partner, a member of a limited liability company or an officer, director or agent of any corporate applicant, has not been convicted within the preceding 10 years of a felony or within the preceding 10 years of a misdemeanor, statutory violation

punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

(b) No license issued under this chapter may be transferred.

(c) Except for a one-day auction license, each license is valid from January 1 until the following December 31.

(d) License fee. The license fee, as determined and set by the common council from time to time, shall be payable at the time application is made with the City Clerk.

(3) *Display of license.* Each license issued under this chapter must be displayed in a conspicuous place visible to anyone entering a licensed premise.

(4) *Investigation of applicant.* The Police Department shall investigate each applicant for a secondhand article dealer or secondhand jewelry dealer license to determine whether the applicant has been convicted of a felony, misdemeanor, statutory violation punishable by forfeiture, or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor, or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed. The results of the investigation shall be furnished to the City Clerk in writing.

(5) *Grounds for Action on License.* The City may, upon sufficient cause, refuse to issue, suspend, revoke, or deny renewal of any license issued under this chapter. Cause for non-issuance, suspending, revoking or denying renewal of such license shall include, but not be limited to, the following:

(a) Violations of this chapter; violations of §§ 134.71, 943.10 (Burglary), 943.11 (Entry into locked vehicle), 943.12 (Possession of burglarious tools), 943.20 (Theft), 943.201 (Unauthorized use of an individual's personal identifying information or documents), 943.203 (Unauthorized use of an entity's identifying information or documents), 943.34 (Receiving stolen property), 943.37 (Alteration of property identification marks), 943.38 (Forgery), 943.39 (Fraudulent writings), 943.392 (Fraudulent data alteration), 943.40 (Fraudulent destruction of certain writings), 948.62 (Receiving stolen property from a child), and 948.63 (Receiving property from a child) of the Wisconsin Statutes; or violations of local ordinances in conformity with such provisions.

(b) Any fraud, misrepresentation, or false statement contained in the application for a license.

Sec. 14-55. - Records.

(1) Records to be maintained.

(a) *Identification of seller.* No secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without securing adequate identification from the customer at the time of the transaction.

(b) *Declaration of seller's ownership.*

1. For each purchase, receipt, or exchange of any secondhand article or secondhand jewelry from a customer, every secondhand article dealer and secondhand jewelry dealer licensed under this chapter shall require the customer to complete and sign, in ink, a property transaction form, in compliance with Wis. Stat. § 134.71(12). No entry on such a form may be erased, mutilated, or changed. The secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one year after the date of the transaction.

2. For each purchase, receipt, or exchange of any secondhand article or secondhand jewelry from a customer, every secondhand article dealer and secondhand jewelry dealer licensed under this chapter shall keep a permanent record and inventory in such form as the Police Department shall prescribe, in which the dealers shall record legibly in English the name, address and date of birth of each customer and driver's license number or number of other adequate identification presented. The dealer shall also record the date, time, and place of the transaction and an accurate and detailed account and description of each article being purchased, including, but not limited to, any trademark, identification number, serial number, model number, brand name, description by weight and design of such article, and other identifying marks, identifying descriptions of the personal nature, and when applicable, whether the article is a male or female item. The record shall be kept electronically or in ink, and no entry shall be erased, mutilated, or changed. The secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each record and inventory for not less than one year after the date of transaction.

3. Every secondhand article dealer and secondhand jewelry dealer shall on a weekly basis prepare a list that contains the name and address of each customer during the week for which the list was prepared, the date, time, and place of each transaction with each of those customers, and a detailed description of the secondhand article or secondhand jewelry, including the serial number and model number, if any. The dealer shall retain the list for not less than one year after the date on which the list was prepared.

4. The dealer shall also obtain a written declaration of the seller's ownership which shall state whether the article or jewelry is totally owned by the seller, how long the seller has owned the article or jewelry, whether the seller or someone else found the article or jewelry and, if the article or jewelry was found, the details of its finding. The dealer or shall retain an original and duplicate of the declaration for not less than one year after the date of the transaction.

5. The seller shall sign, in ink, his or her name in such inventory register and on the declaration of ownership.

6. Such inventory registers and declarations of ownership shall be made available to any police officer for inspection at any time that the dealer's principal place of business is open or within one business day of an officer's request.

(c) *Digitized photographs.*

1. Effective 60 days from the date of notification by the Police Department of acceptable photographic or video standards, the licensee must also take a color photograph or color video recording of every item a secondhand article dealer or secondhand jewelry dealer has purchased that does not have a unique serial or identification number permanently engraved or affixed. This requirement does not apply to computer software, computer or video games, DVDs or video games, and golf clubs.

2. When a photograph is taken, it must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which they relate.

3. Photographs must be available to any police officer upon request.

4. Items photographed must be accurately depicted.

5. Effective 60 days from the date of notification by the Police Department, licensees must fulfill this photograph requirement by submitting them as digital images, in a format specified by the Police Department, electronically cross-referenced to the reportable transaction they are associated with.

(d) *Digital video system.* The licensee shall maintain a digital video system that records all transactions as they occur and captures the entire transaction. The video also must capture a full face shot of the person conducting the transaction, and must be maintained in such a manner that the video can be readily matched and correlated with all other records of the transaction to which they relate. Such videos must be available to any police officer upon request. Entries of required digital images shall be retained a minimum of 90 days.

(2) Firearms and jewelry records to be maintained.

(a) *Report of receipt.* Every secondhand article dealer or secondhand jewelry dealer in the City who obtains by pawn, purchase or exchange any secondhand firearm, whether smooth bore, shotgun, rifle or handgun, shall, within one business day after receiving such firearm, report to Police Department the fact that the same has been received, with the name, address, date of birth, and description of the person from whom such firearm was received, together with a description of such firearm.

(b) Every secondhand article dealer or secondhand jewelry dealer in the City who obtains in pawn, purchase or exchange any secondhand article made in whole or in part of platinum, gold, silver, copper, brass, bronze or other precious metal, or precious or semiprecious stones or pearls, shall, within one business day after receiving such article, report to the Police Department the fact that same has been received, with the name, address, date of birth, and description of the person

from whom such jewelry was received, together with the description of such article.

(3) *Inspection of records.* Records must at all reasonable times be open to inspection by any police officer. Data entries shall be retained for at least one year from the date of transaction. Digital images or video recordings shall be retained a minimum of 30 days.

(4) *Electronic reporting.*

(a) *Daily reports to Police Department.* A licensee must submit every reportable transaction to the Police Department within 24 hours of the transaction. A licensee must provide to the Police Department all reportable transaction information by transferring it from licensee's computer to the Northeastern Wisconsin Property Reporting System ("NEWPRS"). All required records must be transmitted completely and accurately in accordance with standards and procedures established by the issuing authority.

1. If a licensee is unable to successfully transfer the required reports to NEWPRS within 24 hours of the transaction, the licensee must provide the Police Department, upon request, printed copies of all reportable transactions, along with the video recording(s) for that date, no later than noon the next business day after the failure occurred.

2. If the problem is determined to be in the licensee's system or with the licensee's Internet connection, and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in this section and shall be charged a reporting failure penalty of \$100 daily, until the error is corrected.

3. If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in this section and resubmit all such transactions via the Internet when the error is corrected.

4. If a licensee is unable to capture, digitize or transmit the photographs required under this section, the licensee must immediately take all required photographs with a still camera, cross-reference the photographs to the correct transaction, and make the pictures available to the Police Department upon request.

5. Regardless of the cause or origin of the technical problems that prevented the licensee from uploading the licensee's reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed.

6. The Police Department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

Sec. 14-56. - General Rules.

(1) Every secondhand article dealer or secondhand jewelry dealer shall have on premises a Person in Charge at all times that the pawnbroker, secondhand article dealer

or secondhand jewelry dealer is open to the public.

(2) No secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from an unemancipated minor unless the minor is accompanied by his or her parent or guardian at the time of the transaction or the minor provides written consent from his or her parent or guardian to engage in the transaction.

(3) *Police order to hold property.*

(a) Investigative hold. Whenever a law enforcement official from any law enforcement agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, whichever comes first.

(b) Order to hold. Whenever the Chief of Police, or the Chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the Chief or the Chief's designee. The order to hold shall expire 90 days from the date it is placed unless the Chief of Police or the Chief's designee determines the hold is still necessary and notifies the licensee in writing.

(c) Order to confiscate. If an item is identified as stolen or evidence in a criminal case, the Chief or Chief's designee may physically confiscate and remove it from the shop, pursuant to a written order from the Chief or the Chief's designee, or place the item on hold or extend the hold as provided in subsection 13.15(12)(b), and leave it in the shop.

(d) When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

(e) When an order to hold/confiscate is no longer necessary, the Chief of Police or Chief's designee shall so notify the licensee.

(4) *Inspection of items.* At all times during the terms of the license, the licensee must allow law enforcement officials to enter the premises where the licensed business is located, including all off-site storage facilities, during normal business hours, except in an emergency, for the purpose of inspecting such premises and inspecting the items, ware and merchandise and records therein to verify compliance with this chapter or other applicable laws.

(5) *Business at only one place.* A license under this chapter authorizes the licensee to carry on its business only at the permanent place of business designated in the license. However, upon written request, the Chief of Police, or Chief's designee, upon conferring with the Community Development Director, may approve an off-site locked and secured storage facility. The licensee shall permit inspection of the facility in accordance with this

chapter. All provisions of this chapter regarding record keeping and reporting apply to the facility and its contents. Property shall be stored in compliance with all provisions of the City Code. The licensee must either own the building in which the business is conducted, and any approved off-site storage facility, or have a lease on the business premises that extends for more than 6 months.

(6) No secondhand article dealer or secondhand jewelry dealer may receive any goods from a person of unsound mind or an intoxicated person.

(7) No secondhand article dealer or secondhand jewelry dealer may receive any goods, unless the seller presents identification as required under this ordinance.

(8) No secondhand article dealer or secondhand jewelry dealer may receive any item of property that possesses an altered or obliterated serial number or identification number or any item of property that has had its serial number removed.

(9) No person may sell, consign, leave, or deposit any article of property not their own; nor shall any person sell, consign, leave, or deposit the property of another, whether with permission or without; nor shall any person sell, consign, leave, or deposit any article of property in which another has a security interest; with any licensee. This provision shall not apply where a customer who in person and in writing authorizes an agent to conduct future transactions on behalf of the customer provided that the customer accepts responsibility for any such transactions and the agent provides adequate identification verifying their identity during the transaction.

(10) No person seeking to sell, consign, leave, or deposit any article of property with any licensee shall give a false or fictitious name; nor give a false date of birth; nor give a false or out of date address of residence or telephone number; nor present a false or altered identification, or the identification of another; to any licensee.

(11) Except as provided in Sec. 14-52(4)(f), no secondhand article dealer or secondhand jewelry dealer shall accept, receive sell or otherwise transact business involving donated goods. For Resale Furniture and Household Merchandise Dealers, the minimum consignment value for an article shall be \$30.

Sec. 14-57. - Adoption of State Law. The provisions of Wis. Stat. §§ 134.695 and 134.71, Chapter 480, and administrative code provisions enacted thereunder, that are not inconsistent with the provisions of this Code are adopted by reference and made a part of this section with the same force and effect as if fully set forth herein. Any future amendments, revisions or modifications of same are intended to be made part of this code in order to secure uniform statewide regulation.

Sec. 14-58. - Penalties. Any violation of the provisions of this chapter by any person or entity shall be unlawful and punishable as provided in section 1-7 of this Code. Each day of continued violation shall constitute a separate offense. Every violation of this article is a public nuisance and the creation may be enjoined and the maintenance may be abated by action at suit of the City of Mequon, the state, or any citizen thereof pursuant to Wis. Stat. § 87.30.

Secs. 14-59-14-83. - Reserved.

Approved by: John Wirth, Mayor

Date Approved: February 11, 2020

I certify that the foregoing Ordinance was adopted by the Common Council of the City of Mequon, Wisconsin, at a meeting held on February 11, 2020.

Caroline Fochs, City Clerk

Published: February 20, 2020