

MEMORANDUM

October 10, 2014

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Action:** Bill 38-14, Secondhand Personal Property – Definitions - Payment

Public Safety Committee recommendation (2-0): enact Bill 38-14 as introduced.

Bill 38-14, Secondhand Personal Property – Definitions - Payment, sponsored by the Council President at the request of the County Executive, was introduced on July 29. A public hearing was held on September 16 and a Public Safety Committee worksession was held on October 2.

Bill 38-14 would exclude certain items of personal property with resale value below a certain dollar amount from the definition of secondhand personal property. The threshold amount would be set by method (3) regulation. The bill would also permit a secondhand personal property dealer to pay to purchase secondhand personal property by store credit. Current law requires payment by check.

Background

The County's Secondhand Personal Property Law, Chapter 44A of the County Code, was first enacted in 1983 and provides law enforcement officials with a tool necessary to recover stolen property and identify suspects who commit crimes in the County. The law requires a dealer in secondhand personal property to obtain a license from the Office of Consumer Protection, report all transactions to the Police, and hold all property received for a certain period of time after reporting the transaction. The Police can then check stolen property reports against the list of secondhand personal property received or sold by dealers.

“Personal property” is defined in Chapter 44A as follows:

Personal property includes radios and other audio equipment; televisions and other video equipment; photographic, optical and computer equipment; typewriters, calculators and other electronic

or electrical home or office appliances, machines or equipment; firearms; bicycles; jewelry; furs, leather goods; watches; paintings; fine or historic china, crystal, glass or porcelain; objets d'art; power tools; carpets and rugs; musical instruments; and any item serialized, marked for identification purposes, or engraved.

The current definition of “secondhand personal property” is as follows:

Secondhand personal property means previously owned personal property offered for sale or as collateral by any person, other than the manufacturer, wholesale distributor, or original retail seller, acting in the ordinary course of business. Secondhand personal property does not include personal property purchased at a public sale.

In addition to the licensing, reporting, and retention requirements in the law, Chapter 44A-9 requires that a dealer “pay for each item of secondhand personal property by check, except as permitted by regulation under method (3).” The applicable regulation, 44A.03.01.06, requires that a dealer pay for all secondhand personal property by check, unless the total amount paid does not exceed \$10.00 for each transaction.

Public Hearing and Correspondence

Captain Terrence Pierce of the Montgomery County Police Department was present at the public hearing to answer any questions the Councilmembers might have that related to the memorandum in support of the Bill from Chief Manger. See ©13. There were no questions for Captain Pierce, and there were no other speakers at the September 16 public hearing.

In addition to the memorandum from Chief Manger, correspondence supporting the Bill was received from Laura Bishop, Vice President of Public Affairs for Best Buy (©14), Gerard Keegan of CTIA-The Wireless Association (CTIA) (©15), and Nancy Kline, Owner of Uptown Cheapskate in Rockville (©16). Best Buy supports the Bill because it would allow the company to offer its Best Buy Trade-in Program, which allows customers to trade in old consumer electronics in exchange for gift cards. Similarly, CTIA, a non-profit corporation that represents the interests of the wireless communications industry, supports the Bill because the change in method of payment would expressly allow the exchange of mobile phones for credit towards new ones, a practice common in the wireless industry. In its letter, CTIA also requested an additional amendment to the bill specifically excluding a wireless service provider, its agents, and its retailers, from the definition of “dealer” in the Secondhand Personal Property Law. Nancy Kline of Uptown Cheapskate also generally supports the Bill, but requests an amendment to the definition of “secondhand personal property” concerning the dollar threshold for exclusion from the definition.

Issues for Committee Discussion

1. **Should items with a resale value below a certain dollar threshold be exempt from the Secondhand Personal Property Law's requirements?**

Under current law, secondhand personal property dealers must maintain, and provide to police, records containing specific information for *each* item of secondhand personal property bought or received (see ©9), and must retain each item of secondhand personal property for at least 21 days after it is bought or received (see ©9-10). These requirements include thrift stores which routinely receive and resell items within the law's definition of secondhand personal property. The items sold by thrift stores are generally donated, and often of low monetary value, but the recordkeeping and retention requirements still apply. In such instances, the requirements place a burden on the seller while having minimal to no impact on furthering the objectives of the law. In his letter, Chief Manger indicates that reducing the number of items entered into the pawn-tracking software used by the Police Department would allow the Department to expedite review of secondhand personal property transactions and compare them to items reported stolen.

2. **Should dealers be permitted to pay for secondhand personal property by store credit?**

Existing law requires payment for secondhand personal property to be made by check. Since the enactment of the law, the practice of exchanging older electronic items for store credit toward a new one has become widespread. Chief Manger indicates that the retail industry has stated that this practice allows for the tracking of the identity of the person to whom a gift card or store credit is issued in a manner that is sufficient for the Police Department to pursue a criminal investigation, if necessary. This proposed change to the law only provides for an additional means of payment for secondhand personal property; the recordkeeping and retention requirements would remain the same.

3. **Should a wireless service provider, its agents, and its retailers be excluded from the definition of "dealer?"**

CTIA, in its letter supporting the Bill, has requested an additional amendment to the Secondhand Personal Property law. The requested amendment would expressly exempt "a wireless service provider, its agents or retailers . . ." from the law's definition of "Dealer." CTIA contends that transactions involving wireless service providers are governed by the federal Stored Communications Act (SCA), and that the requested amendment is necessary to avoid having County law preempted.

Congress enacted the SCA, 18 U.S.C. 121, §§ 2701–2712, in 1986 as Title II of the Electronic Communications Privacy Act of 1986. Under the SCA, "a provider of . . . electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber or customer of such service ... to any governmental entity" unless a statutory exception applies. It is possible that some of the information included in the record provided to police by a dealer under County law may be subject to the SCA's prohibitions on disclosure. However, it does not appear that the recordkeeping and retention requirements of the

County law *generally* conflict with the SCA. Thus, a wholesale exemption of wireless service providers and their agents or retailers may not be necessary to avoid potential conflict with the SCA. If such a change to the County law is necessary, it should be made after full consideration by the Police Department and the Office of Consumer Protection.

Council staff recommendation: Because such a change could have a significant impact on the ability of County law enforcement to investigate possible crimes related to these transactions, staff recommends not making the amendment requested by CTIA to Bill 38-14, unless requested by the Executive branch. If the Committee wishes to clarify that the County law does not require the disclosure of information that is subject to the SCA’s prohibitions on disclosure, it could do so with the following amendment:

Add a new paragraph after line 13 at © 2 as follows:

Sec. 44A-3. Required books and records; reporting requirements.

* * *

(d) Nothing in this Section requires a dealer to give to the Police any information that is prohibited from disclosure under applicable State or federal law.

* * *

4. Should the dollar threshold for exclusion from the definition of “secondhand personal property be “resale value” or “amount paid by the reseller?”

In her letter, Nancy Kline, owner of the Uptown Cheapskate store in Rockville requested that the Bill be amended to provide that the dollar threshold for items to be excluded from the definition of “secondhand personal property” be dependent on the price paid by the reseller rather than on the “resale value,” as the Bill currently provides. The Police are generally concerned with the “street value” of secondhand personal property, so the price at which it is resold appears to be to proper measure. Additionally, making the exclusion dependent on the price paid by the reseller would complicate enforcement, because that amount, unlike the resale price, is not easily available to law enforcement.

Council staff recommendation: Do not amend the Bill to provide that the dollar threshold for items to be excluded from the definition of “secondhand personal property” be dependent on the price paid by the reseller rather than on the “resale value.”

Committee Discussion/Recommendation

The Public Safety Committee considered Bill 38-14 on October 2, 2014. The Committee heard an overview of the value of the Secondhand Personal Property law to the Police Department in solving crimes, and discussed the issues raised in the packet. The Committee (2-0, Councilmember Berliner absent) recommended enactment of Bill 38-14 as introduced.

This packet contains:	<u>Circle #</u>
Bill 38-14	1
Legislative Request Report	3
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Bill No. 38-14
Concerning: Secondhand Personal
Property – Definitions – Payment
Revised: 07/09/2014 Draft No. 2
Introduced: July 29, 2014
Expires: January 29, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) exclude certain items of personal property with resale value below a certain dollar amount from the definition of secondhand personal property;
- (2) permit payment by store credit; and
- (3) generally amend the secondhand personal property law

By amending

Montgomery County Code
Chapter 44A, Secondhand Personal Property
Sections 44A-1 and 44A-9

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Section 1. Sections 44A-1 and 44A-9 are amended as follows:

44A-1. Definitions.

When used in this Chapter:

* * *

Secondhand personal property means previously owned personal property offered for sale or as collateral by any person, other than the manufacturer, wholesale distributor, or original retail seller, acting in the ordinary course of business. Secondhand personal property does not include:

- (1) personal property purchased at public sale[.]; or
- (2) items of personal property that have a resale value below a dollar threshold specified for that type of personal property in a regulation adopted under method (3).

* * *

44A-9. Payments by check or store credit.

A dealer must pay for each item of secondhand personal property by check or by granting a credit toward the purchase of other merchandise from the dealer, except as permitted by regulation under method (3).

Approved:

Craig Rice, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 38-14

Secondhand Personal Property – Definitions - Payment

DESCRIPTION: Exempts certain items of personal property below a certain dollar threshold from the definition of secondhand personal property and allows for payment by check or store credit

PROBLEM: Amendments are needed to reflect changes in the marketplace.

GOALS AND OBJECTIVES: Response to changes in the marketplace and address concerns expressed by retail thrift stores and national chain retailers.

COORDINATION: Office of Consumer Protection and Police Department

FISCAL IMPACT: Attached

ECONOMIC IMPACT: Attached

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Office of Consumer Protection
Police Department
Office of the County Attorney

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: No change



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 23, 2014

TO: Craig Rice, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Decision Memorandum – Proposed Legislation to Amend County Code
Chapter 44A, Secondhand Personal Property

Transmitted for your review are proposed amendments to Chapter 44A,
Secondhand Personal Property.

The proposed amendments are intended to allow merchants to: i) “pay”
consumers for secondhand personal property with a store credit rather than only by
check; and ii) exclude specified secondhand personal property below a certain dollar
threshold from these regulations. There is no additional expected fiscal impact to
Montgomery County associated with these proposed amendments.

If you have any questions or would like any additional information, please
contact Eric Friedman, Director, Office of Consumer Protection, at (240) 777-3636.

IL/esf

Fiscal Impact Statement
Legislation to Amend County Code Chapter 44A, Secondhand Personal Property

1. Legislation Summary

The purpose of this code amendment is to respond to changes in the marketplace and to address concerns expressed by retail thrift stores and national chain retailers. The proposed amendments are intended to allow merchants to: i) "pay" consumers for secondhand personal property with store credit rather than only by check; ii) exclude certain items of personal property that have a resale value below a certain dollar threshold from the definition of secondhand personal property.

The proposed changes update the code for changes in the marketplace. The changes do not affect the current duties or responsibilities of the Department of Police or Office of Consumer Protection.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No impact on revenues or expenditures.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No impact on revenues or expenditures.

4. An actuarial analysis through the entire amortization period for legislation that would affect retiree pension or group insurance costs.

Not Applicable

5. Later actions that may affect future revenue and expenditures if the legislation authorizes future spending.

Not Applicable

6. An estimate of the staff time needed to implement the legislation.

The staff time for the Department of Police and Office of Consumer Protection to disseminate information related to the changes to secondhand personal property dealers would be minimal and can be accomplished online.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

The impact will be minimal as information related to changes will be disseminated online

8. An estimate of costs when an additional appropriation is needed.

Not Applicable

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable

11. If legislation is likely to have no fiscal impact, why that is the case.

Not Applicable

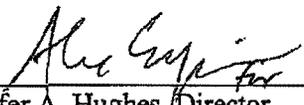
12. Other fiscal impacts or comments.

None

13. The following contributed to and concurred with this analysis (enter name and dept.)

Eric Friedman, Director, Office of Consumer Protection

Jahantab Siddiqui, Management & Budget Specialist, OMB



Jennifer A. Hughes, Director
Office of Management and Budget

6/20/2014
Date

Economic Impact Statement
Bill #-14, Amending The Definition Of Secondhand Personal Property
And Allowing Payment By Store Credit

Background:

This legislation would amend Sections 44A-1 and 44A-9 of the County Code to allow merchants to:

- Pay consumers for secondhand personal property with store credit. The current law only allows payment by check as permitted under current regulation (Section 44A-9);
- Exempt certain items of personal property that have a resale value below a certain dollar threshold from the definition of secondhand personal property (Section 44A-1).

1. The sources of information, assumptions, and methodologies used.

The source of information in preparation of the economic impact statement is the Office of Consumer Protection (OCP).

2. A description of any variable that could affect the economic impact estimates.

Bill #-14 amends two sections of Chapter 44A – Secondhand Personal Property that define the value of secondhand personal property under Chapter 44A and allows store credit as payment to customers. Therefore, there are no economic variables that are affected by the amendments to Chapter 44A.

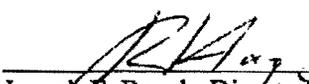
3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Bill #-14 would have no economic impact on employment, spending, saving, investment, incomes, and property values in the County. Bill #-14 allows payment as store credit as well as the current policy of payment by check. Therefore Bill #-14 has no affect on business or personal income.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph #3.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Eric Friedman, Director, Office of Consumer Protection.

For


Joseph F. Beach, Director
Department of Finance

6/19/14
Date

Chapter 44A. Secondhand Personal Property.

(Excerpt)

Sec. 44A-1. Definitions.

When used in this Chapter:

Automated Purchasing Machine means a self-service device that:

- (1) is designed to dispense payment in exchange for personal property; and
- (2) is also known as a reverse vending machine.

Dealer means a person conducting the business of buying, receiving, or marketing secondhand personal property in the County, including:

- (1) an auctioneer; and
- (2) a person who buys, receives, markets, or assists in the sale of secondhand personal property through the Internet or another electronic method.

Director means the Chief of Police.

Person includes an individual, corporation, business trust, estate, trust, partnership association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

Personal property includes radios and other audio equipment; televisions and other video equipment; photographic, optical and computer equipment; typewriters, calculators and other electronic or electrical home or office appliances, machines or equipment; firearms; bicycles; jewelry; furs, leather goods; watches; paintings; fine or historic china, crystal, glass or porcelain; objets d'art; power tools; carpets and rugs; musical instruments; and any item serialized, marked for identification purposes, or engraved.

Police means the County Police Department or another police department having jurisdiction.

Secondhand personal property means previously owned personal property offered for sale or as collateral by any person, other than the manufacturer, wholesale distributor, or original retail seller, acting in the ordinary course of business. Secondhand personal property does not include personal property purchased at a public sale.

Public sale means a sale open to the public and held in a location open and accessible to the public, with sufficient public notice of the time and place of the sale to give the public a reasonable opportunity to participate.

Recyclable materials means *recyclable solid waste* as defined in Section 48-46.

Sec. 44A-2. License required.

A person must not conduct the business of a dealer unless the person possesses a dealer's license issued by the Office of Consumer Protection, which must be displayed to the public wherever the person conducts the business of a dealer. An individual must not act as officer, employee or agent, and in that capacity engage in transactions involving secondhand personal property, for a person required to be licensed by this Chapter unless the person possesses a valid and current dealer's license.

Sec. 44A-3. Required books and records; reporting requirements.

(a) A dealer must keep all records and receipts required by this section at the business location for a minimum of 1 year from the date of the latest recorded transaction.

(b) A dealer must keep an electronic record, in English, of each purchase or receipt by or on behalf of the dealer at the time of the transaction. Each transaction must be recorded in an electronic format specified by regulation under method (3), which contains the following information:

- (1) The name, date of birth, address, race, sex, physical description, and signature of the person selling the item;
- (2) The driver's license number or similar proof of identification of the person selling the item;
- (3) The date and time of the transaction;
- (4) The identification, including signature, of the person making the record entry;
- (5) A full physical description of each item purchased or received by the dealer, including but not limited to, shape, size, color, and a list of all numbers, marks, monograms, trademarks, manufacturer's names, serial numbers, inscriptions and any other marks of identification appearing on the item; and
- (6) The consideration paid for each item or set of items.

(c) A dealer must give the Police:

- (1) electronic notice of each transaction within 24 hours after the transaction; and
- (2) a copy of the written record of each transaction required in subsection (b) within 7 days after the transaction.

Sec. 44A-4. Retention of secondhand personal property.

(a) A person must not sell, melt, change or alter (except for customary testing), take apart, destroy, obliterate identification marks, or dispose of any secondhand personal property

purchased or received by a dealer until 21 days after the record of the transaction is submitted to the Police.

(b) All secondhand personal property purchased or received by a dealer must be stored at the dealer's business location until 21 days after the record of the transaction is submitted to the Police, or for such additional time per any specific item as the Police require. All stored items must be identified by a tag attached to the property numbered to correspond with the number of the transaction record. Items purchased in bulk may be tagged in bulk. The storage requirements in this subsection do not apply to a consignee who:

- (1) operates from a fixed place of business;
- (2) complies with the tagging requirements of this subsection; and
- (3) withholds payment for consignments for at least 30 days after each item is received.

(c) Items may be stored at other locations in the County approved by the Police. The dealer must produce these items at the business location within 1 hour after a request to do so by the Police. A dealer who cannot comply with a request to produce an item made after regular business hours must produce the item within 1 hour after the opening of business on the next business day.

(d) The requirements of subsections (a), (b), and (c) do not apply to secondhand personal property which has been inspected and cleared for earlier disposition by the Police under regulations adopted under method (3).

Sec. 44A-5. Transactions involving minors prohibited.

A dealer must not buy or receive any secondhand personal property from a person under 18 years old.

Sec. 44A-6. Confidentiality of reports to Police.

The reports to the Police required by Section 44A-3 are confidential information for use by law enforcement agencies for law enforcement purposes. The full physical description of reported items may, however, be shown to private individuals to aid in identifying stolen property.

Sec. 44A-7. Inspection by police; release of stolen property.

- (a) A dealer must permit the Police to:
- (1) examine the records required by this Chapter;
 - (2) examine any personal property purchased, received, or stored at the business location; and
 - (3) require retention for an additional 30 days after the storage retention period under Section 44A-4, of any property which the police know or believe to be missing or stolen.

(b) A dealer must release to the Police an item of secondhand personal property, other than a security or printed evidence of indebtedness, located at the dealer's place of business if:

(1) the Police have reasonable cause to believe that the item was stolen;
(2) the owner of the item or victim of the theft has positively identified the item;

(3) the owner of the item or the owner's agent or designee has provided an affidavit of ownership;

(4) the stolen property report describes the item by:

- (i) a date;
- (ii) initials it bears;
- (iii) an insurance record;
- (iv) a photograph;
- (v) a sales receipt;
- (vi) a serial number;
- (vii) specific damage;
- (viii) the facts that show that the item is one of a kind; or
- (ix) a unique engraving; or

(5) the property is involved in an on-going criminal or administrative proceeding where violations of this Chapter have occurred.

(c) The Police must give the dealer a receipt for each item of secondhand personal property released to the Police pursuant to subsection (b). The receipt must:

(1) describe the item; and

(2) notify the dealer of the right to request a statement of charges against the individual who sold or gave the item to the dealer for theft under State law.

Sec. 44A-8. Application for license; license fee.

(a) The Office of Consumer Protection must make available an application form for a dealer's license that requires an applicant to certify that the information given is correct under the penalties of perjury.

(b) The Executive, by regulation adopted under method (3), must set a license fee in an amount that does not exceed the estimated costs of administering and enforcing this Chapter.

(c) The dealer must agree in the application to:

(1) authorize the Police to inspect the records, inventory, and premises of the business during normal business hours;

(2) pay for the purchase of any secondhand personal property by check; and

(3) not cash any check, except a check issued by the dealer to pay for secondhand personal property, or as permitted by regulation adopted under method (3).

(d) Only individuals may apply for a dealer's license.

(1) A license application on behalf of a corporation or limited partnership must be applied for by and issued to the president of the corporation or one or more members of the partnership who are authorized to act for it.

(2) A license application on behalf of a partnership must be applied for by and issued to all of the partners who are authorized to act for the partnership.

(3) Each individual who applies for a dealer's license under this section assumes, as an individual, all responsibilities of the dealer and, as an individual, is subject to all conditions, restrictions and requirements imposed on dealers.

Sec. 44A-9. Payments by check.

A dealer must pay for each item of secondhand personal property by check, except as permitted by regulation under method (3).

BILL 38-14



JH
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DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

MEMORANDUM

August 13, 2014

TO: The Honorable Craig Rice, President
Montgomery County Council

FROM: J. Thomas Manger
Chief of Police 

SUBJECT: Support for bill 38-14, "Secondhand Personal Property-Definitions-Payment"

RECEIVED
MONTGOMERY COUNTY
POLICE DEPARTMENT

2014 AUG 15 PM 1:50

The purpose of this communication is to express my support—and that of Consumer Protection Director Eric Friedman—for bill 38-14, “Secondhand Personal Property – Definitions – Payment.”

Bill 38-14 was written in an effort to accommodate the request of the business community, specifically secondhand-property owners and big-box stores, while still meeting the enforcement and reporting needs to safely defend the community. The current law’s original intent was to help police stop criminals who were selling stolen merchandise to pawn shops in exchange for cash. In order to make it harder for the criminal element, Chapter 44A was written so that payments made to the seller had to be in the form of a check, which would allow the police an opportunity to identify the person responsible for selling stolen items.

Changing the definition of secondhand personal property would alleviate the burden on dealers from having to report every single item that they take in. Dealers would have fewer items to enter into the pawn-tracking software and the police department would be able to expedite the amount of time it takes to review all transactions and compare them to stolen items.

Nationally, large and small retail stores have policies that allow their customers to bring in older electronic items and have them applied towards a new item. These stores also have the ability for customers to return items for store credit or a gift card. According to the retail industry, they have the ability to track the identity of the person to whom a gift card or store credit is issued, thus providing the police department with an acceptable paper trail to be able to launch a criminal investigation should the need arise.

The laws governing secondhand personal property are over 30 years old. Bill 38-14 would have little to no implication on how the police department is able to track these transactions. Therefore, I urge you and the Montgomery County Council to pass this legislation.

JTM:mam
c: Eric Friedman, Director/Consumer Protection

Office of the Chief of Police

Public Safety Headquarters • 100 Edison Park Drive • Gaithersburg, Maryland 20878
www.montgomerycountymd.gov • www.mymcpnews.com • MCPDChief@montgomerycountymd.gov



August 25, 2014

The Honorable Craig Rice
President, Montgomery County Council
Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, MD 20850

Dear Councilmembers,

On behalf of our customers and our employees who work at one of the seven Best Buy stores in Montgomery County, we would like to take this opportunity to express our support for bill 38-14, which updates Montgomery County's secondhand personal property law. Passage of bill 38-14 would allow Best Buy to begin offering product trade-in services to our customers in Montgomery County.

In most markets across the county, the Best Buy Trade-In Program allows customers to trade in and recycle their old consumer electronics (mobile phones, iPads, etc.) in exchange for Best Buy gift cards, all while keeping these products out of public landfills. We run a very robust program committed to preventing fraud and not facilitating the sale of stolen property.

Due to the unique nature of Montgomery County's secondhand personal property law which requires payment by check, we have been unable to offer the Best Buy Trade-in program to our customers. Bill 38-14 would update the law and allow retailers to offer store credit for secondhand personal property purchases.

We appreciate the work of the Montgomery County Executive and the Office of Consumer Protection on this proposed law change and strongly encourage your support for bill 38-14.

Thank you for your consideration.

Sincerely,

Laura Bishop
Vice President, Public Affairs

September 15, 2014

The Honorable Craig Rice
Montgomery Council President
Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, MD 20850

Re: Bill No. 38-14

Dear Council President Rice:

On behalf of CTIA-The Wireless Association®, the trade association for the wireless communications industry, I write in support of Montgomery County Bill No. 38-14, which would amend County Code Section 44A-9 to permit covered businesses the option of providing store credit when purchasing second-hand property.

Wireless service providers and their authorized agents have programs for purchasing, exchanging, or otherwise acquiring electronic devices belonging to their customers and potential customers, and such transactions are governed by the federal Stored Communications Act. These trade-in activities have proven to be popular with consumers, including consumers in Montgomery County, and provide consumers with a safe and reliable way to exchange and recycle their devices. In looking at Bill No. 38-14, it came to our attention that County Code Chapter 44A does not contain an explicit exemption for those businesses, which is necessary to avoid having the ordinance preempted by federal law. For this reason, we respectfully request that Bill No. 38-14 be amended to adopt the following change to the definition of "dealer" in Code Section 44A-1:

Dealer (a) means a person conducting the business of buying, receiving, or marketing secondhand personal property in the County, including:

- (1) an auctioneer; and
- (2) a person who buys, receives, markets, or assists in the sale of secondhand personal property through the Internet or another electronic method.

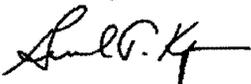
(b) does not mean a wireless service provider, its agents, or retailers whose primary business involves:

- (1) transacting in the sale and activation of electronic devices on the wireless network; or
- (2) conducting transactions involving the trade-in or other acquisition of an electronic device when the value given is a credit that may only be redeemed with the wireless provider or its agent or retailer.

This amendment would clarify the existing ordinance, preventing any confusion as to the legitimacy of wireless carriers' trade-in activity. Given the protections afforded under federal law, the amendment would simply make the current status of these programs explicit under the ordinance, and should not have any impact on the true intent, purpose, or impacts embodied by the ordinance.

Thank you for the opportunity to comment. Please contact me if you have questions or need more information at gkeegan@ctia.org or 202.736.3238.

Sincerely,



Gerard Keegan
Senior Director
State Legislative Affairs

cc: Josh Hamlin, Esq.
Legislative Attorney for the County

UPTOWN CHEAPSKATE

Council's Office of Legislative Information Services
Montgomery County Public Safety Committee
5th Floor
Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Phil Andrews, Chair
Roger Berliner
Marc Elrich

September 22, 2014

Dear Mr. Andrews, Mr. Berliner, Mr. Elrich,

This letter is to serve in lieu of verbal testimony at the work session regarding Bill 38-14, Secondhand Personal Property – Definitions – Payment, scheduled for Oct 2, 2014. Due to a schedule conflict I am unable to attend the session.

A little background – a year ago I began communication with the Office of the Montgomery County Executive and the Department of Police regarding the COMCOR 44A and the difficulty the enforcement was causing in the resale community. Enclosed you will find the communication that outline the main issues.

At this point the solution that is currently in the works seems to be mutually acceptable. The one area that needs to be further clarified is the definition of “resale value below a dollar threshold” that is listed in the amendment. The intent should be that this value is the amount that the reseller is paying the person selling the personal property, in retail terms the “cost” of the item and not the “retail price” that the item will then be resold at. Using the term “resale value” seems a bit vague and subject to interpretation. Perhaps the wording could be amended to ... items of personal property where the value that is being paid to the seller is below a dollar threshold... or something that more clearly spells out the intent.

I understand that the value is not being set today, but I would like to take this opportunity to encourage the committee to consider recommending that amount to be set at \$100.00.

Please do not hesitate to reach out to me for any further clarification. I can be reached via phone at 410.726.5754 or email upturn@uptowncheapkskate.com.

Respectfully Yours,

Nancy Kline
Owner, Uptown Cheap skate
Salisbury, Timonium, Rockville, MD

October 4, 2013

To: Montgomery County Executive and Department of Police

RE: County Regulation pertaining to Secondhand Personal Property, COMCOR 44A

The purpose of this letter is to serve as communication from resale business owners whose businesses have recently been impacted by the enforcement of COMCOR 44A. Our intention with this communication is to work with the County Executive and the Police Department to find a mutually agreeable solution to the numerous issues 44A has raised since being enforced. Below you will find a list of concerns, possible solutions and consideration points.

Concerns:

- ❖ The personal property definitions are very vague and encompass a broad range of merchandise. Example: Leather goods include anything with any leather on it. Jewelry includes all inexpensive costume jewelry
 - One apparel, shoe and accessories resale location could easily purchase hundreds of pieces per day that fall into the categories of jewelry, watches, leather goods and fur. Many of these items are purchased for under \$5 - \$10.
- ❖ The process of gathering the seller's personal information and entering that and each individual item into the Rapid reporting system is burdensome. It adds time to the seller's transaction and it costs the business owner more in payroll dollars. Many sellers feel it is invasive.
 - Again, many of these items are being purchased for a very low dollar amount
 - It is costly to copy and mail these forms; the signature copy is on file in our stores if needed.
 - The Reporting system does not work on Mac Computers
- ❖ The requirement of holding the product for 21 days before offering it for sale is very costly to the business owner. It ties up cash flow, requires more man hours to back stock the item, and requires back stock space which most stores do not have.
 - Again, this could easily be hundreds of items per day.
 - The resale business model is to turn merchandise quickly to generate cash flow to purchase more merchandise.
 - Stores do not have the space to hold this merchandise
- ❖ The requirement of paying by check for any item over \$10 is a roadblock to the business model for several reasons.
 - Many resale shops offer a cash payout or a higher amount in store credit or trade. This requirement does not allow either of these options for the seller.
 - This delays the payment for the honest seller or it takes money from them if they wanted to take the store credit option and use it to purchase items, many sellers sell over time and then use their credit for a larger purchase.

- It is burdensome to the business owner to issue the checks and deal with the bookkeeping aspects. This is very costly and time consuming (Ink, paper, checks, postage and banks may charge for each check)
- ❖ Transactions involving minors are prohibited
 - Since many teens embrace the resale concept it is detrimental to our business model to not allow young adults under 18 sell to a resale store
 - It is their own property they are selling, they should not be discriminated against

Possible solutions:

- ❖ Any leather goods, furs (or fur trimmed items), watches, costume jewelry (excludes precious metals) where the compensation is under \$150 per item is excluded from the regulation. (not reportable, does not need to be held for 21 days or paid for by check)
- ❖ Any leather goods, furs (or fur trimmed items), watches, costume jewelry (excludes precious metals) where the compensation is over \$150 is required to be reported electronically within 24 hours, hard copy mailed within 7 days, paid by check and held for 7 days before being sold. Perhaps the hard copy does not need to be mailed; the stores would keep it on file.
 - Perhaps digital photos of the items would allow the hold time frame to shorten.
- ❖ Eliminate the prohibition of not allowing minors to sell to resale stores.

Points to Consider:

- ❖ The intent of recording the secondhand item is to have a record of the transaction in case the item is stolen. Can a pair of secondhand 9 West brown pumps in size 7.5 be positively identified as the stolen ones?
- ❖ This regulation not only impacts business owners but also Montgomery County Residents looking for a way to pass on their gently used clothing and accessories.
- ❖ This regulation generates additional financial burden during a period where business entities as well as municipalities are struggling to survive in light of the economy and budget constraints.
- ❖ The business model for resale where the business pays upfront for the product is not conducive to holding product. It is very detrimental to have large sums of money tied up in product and not being able to offer it for sale. Also, most store owners do not have adequate storage space.
- ❖ There is an assumption that we are dealing with criminals who steal personal property and sell it, in reality this is the exception and not the rule. If we encounter one criminal in 3 years, how many legitimate sellers have we inconvenienced along the way?
- ❖ Clarify how this should work for consigned items - the payment is not made until the item is sold - so are you required to report it when it is first consigned and then hold it for 21 days before offering it for sale? OR sell it but the customer does not take possession for 21 days? Or does this regulation not include consigned items
- ❖ Perhaps other items listed in the regulation should also have a monetary threshold - such as glassware, carpet, rugs, objects d'art?
- ❖ While reaching out to resale shops in Montgomery County it was discovered that many of the shops had not been contacted and are unaware of the regulation. It is unfortunate that this is not being applied fairly across the board.

We sincerely hope that these concerns, solutions and points are taken into consideration. To say that the enforcement of this regulation has had a detrimental impact on the Montgomery County resale business owners and residents is an understatement. It is unfortunate that the County chooses to put up roadblocks to small business owners. It is doubtful that all businesses can come fully into compliance and remain in business. We appreciate your time and consideration in working with us to find a workable solution.

Sincerely,

Nancy Kline, Uptown Cheapskate

Gayle Herrmann, Mustard Seed

Wendy Ezrailson, Redzz Trading

Scott Murdoch, Boomerangs