


MEMORANDUM

January 24, 2019

TO: Public Safety Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Bill 40-18, Secondhand Personal Property – Dealers - License

PURPOSE: Worksession; Committee should make recommendation on Bill

Expected attendees:

Police Captain Michael Ward
OCP Director Eric Friedman
Detective Sergeant Daniel Clements
Judy Hanger, Administrator - Pawn, Precious Metal, Second Hand Property Unit

Bill 40-18, Secondhand Personal Property – Dealers - License, sponsored by Lead Sponsors Councilmember Friedson and Council Vice-President Katz and co-sponsors Councilmember Alborno, Council President Navarro, and Councilmember Riemer, was introduced on December 11, 2018. A public hearing was held on January 15 at which five speakers testified. Bill 40-18 would exclude certain personal property from the definition of secondhand personal property and provide that a secondhand personal property dealer license expires one year from the date of issuance.¹

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 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.

Under Chapter 44A:

¹Key search terms: #EstateSales, secondhand property, Office of Consumer Protection.

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.

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.

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 a 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).

Under these definitions, individuals and businesses that assist in coordination and marketing of estate sales and other personal property sales held at the residence of the owner of the personal property are covered under the law's definition of "dealer," even though they are not the intended target of the law's requirements. Bill 40-18 would correct this by excluding from the definition of "secondhand personal property" personal property that is offered for sale only on residential property and is owned by a resident of that property or part of the estate of a deceased immediate past resident of that property.

Also, the current term of the secondhand personal property license required under Chapter 44A presents an administrative problem for the Office of Consumer Protection. Under current law, each license expires on July 30 of each year, leading to a high volume of license renewal applications at the same time each year. Bill 40-18 would address this by providing that licenses issued under the law are valid for a period of one year from the date of issuance, thereby spreading the volume of applications over the year. OMB concluded that the Bill would have no impact on the County's revenues or expenditures. Finance concluded that the Bill would have no impact on the County's economy. See the FEIS at ©5-9.

Public Hearing

All 5 speakers at the public hearing supported the Bill. Each of the speakers operates a business that assists clients by marketing or conducting a personal property liquidation in the home of the owner of the property or, if an estate sale, the home of the former owner of the property. See, Brette Bates at ©10-11, Joann Cameron at ©12, Karen Jones at ©13-14, Carol Walser at ©15-16, and Amy Presley at ©17-23. Ms. Presley also requested an amendment that would remove the requirement that the personal property liquidation exempted by the Bill be held at the owner's residence.

Issues

1. Would exempting these personal property liquidations held at the owner's home increase the traffic in stolen goods?

The secondhand personal property law is designed to provide the County police with a tool to recover stolen property and identify suspects who commit crimes in the County. An estate or downsizing sale held by a business that helps the owner sell the owner's property at the owner's residence is unlikely to result in the trafficking of stolen goods. Therefore, the Bill is consistent with the original purpose of the secondhand personal property law. **Council staff recommendation:** approve this provision of the Bill.

2. Should the Bill spread out the renewal date for a dealer license?

Currently, all dealer's licenses expire on July 30 of each year. This creates an administrative burden on the Office of Consumer Protection (OCP) to review each license at the same time. Currently, there are 218 active secondhand personal property dealer's licenses in the County. The Bill would provide that each license is valid for one year after the date of issuance thereby spreading out the date for renewal applications. **Council staff recommendation:** approve this provision of the Bill.

3. Should the Bill be amended to expand this exemption to an estate or downsizing sale occurring off site?

Ms. Presley requested an amendment that would expand this exemption from the law to an estate or downsizing sale held at a site other than the owner or decedent's residence. This would exempt an estate or downsizing sale held by a business at a commercial site. Although the location of the sale may not increase the likelihood of the sale of stolen goods, it may increase the likelihood that other personal property that is owned by different people is included in the sale. Council staff spoke with Police Captain Ward about this requested amendment. The Police Department opposes this requested amendment.

According to Captain Ward, the estate sales businesses have not been complying with the Secondhand Personal Property Law. Therefore, the Department has not found stolen property sold at an estate sale. The Police support exempting estate and downsizing sales held at the property owner's residence but believe that expanding this exemption to sales held off site would increase the likelihood that other personal property would be comingled with the owner's property. Once additional property is comingled, the likelihood of stolen goods increases. **Council staff recommendation:** do not approve this amendment.

4. Should the Bill be amended to expressly authorize the Police Chief or the Chief's designee to issue a citation for violation of the law?

Council staff discussed this issue with the Police Department. Currently, the Office of Consumer Protection is authorized to issue a Class A citation for violation of the law. The Police request an amendment to expressly authorize the Police Chief or the Chief's designee to issue a citation. The Chief would propose that the Administrator of the Pawn, Precious Metal, Second Hand Property Unit of the Financial Crimes Section be designated as an enforcement official. We understand that the Office of Consumer Protection supports this request. If the Committee wants to amend the law, it could be done with the following amendment.

Add the following after line 32 of the Bill:

44A-18. Penalties.

- (a) Any person who violates this Chapter is subject to punishment for a class A violation. Each day that a violation continues is a separate offense.
- (b) The Director of the Office of Consumer Protection may file an action in any court with jurisdiction to enjoin any violation of this Chapter or to enforce any order or decision issued under this Chapter.
- (c) A citation for a violation of this law may be issued by the:
 - (1) Chief of Police or the Chief's designee; or
 - (2) Director of the Office of Consumer Protection or the Director's designee.

This packet contains:	<u>Circle #</u>
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Bill No. 40-18
Concerning: Secondhand Personal
Property – Dealers – License
Revised: 11/18/2018 Draft No. 2
Introduced: December 11, 2018
Expires: June 11, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmember Friedson and Council Vice-President Katz
Co-Sponsors: Councilmember Alborno, Council President Navarro, and Councilmember Riemer

AN ACT to:

- (1) exclude certain personal property from the definition of secondhand personal property;
- (2) provide that a secondhand personal property dealer license expires one year from the date of issuance; and
- (3) generally amend County laws related to secondhand personal property.

By amending

Montgomery County Code
Chapter 44A, Secondhand Personal Property
Sections 44A-1 and 44A-11

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:

Sec. 1. Sections 44A-1 and 44A-11 are amended as follows:

44A-1. Definitions.

When used in this Chapter:

* * *

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.

* * *

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 a public sale; [or]
- (2) personal property that is offered for sale only on residential property and is:
 - (A) owned by a resident of that property; or
 - (B) part of the estate of a deceased immediate past resident of that property; or
- (3) 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-11. Expiration and renewal of license; prohibition on transfer

- 28 (a) Each license issued under this Chapter expires [July 30 of each year]
- 29 one year from the date of issuance.
- 30 (b) A license issued under this Chapter may be renewed on application
- 31 and payment of a fee established by regulation under method (3).
- 32 (c) A license must not be transferred or assigned.

33 *Approved:*

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Nancy Navarro, President, County Council	Date
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35 *Approved:*

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Marc Elrich, County Executive	Date
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37 *This is a correct copy of Council action.*

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Megan Davey Limarzi, Esq., Clerk of the Council	Date
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LEGISLATIVE REQUEST REPORT

Bill 40-18

Secondhand Personal Property – Dealers - License

DESCRIPTION: Bill 40-18 would exclude certain personal property from the definition of secondhand personal property and provide that a secondhand personal property dealer license expires one year from the date of issuance.

PROBLEM: Individuals and businesses that assist in coordination and marketing of estate sales are covered under the current definition of “dealer” under the County’s secondhand personal property law, even though they are not the intended target of the law’s requirements. Also, the current term of the license presents an administrative problem for the Office of Consumer Protection.

GOALS AND OBJECTIVES: Provide that individuals and businesses that assist in coordination and marketing of estate sales held at the residence of the decedent are not considered secondhand personal property dealers. Provide that licenses issued under the law are valid for a period of one year from the date of issuance.

COORDINATION: Department of Police
Office of Consumer Protection

FISCAL IMPACT: To be requested

ECONOMIC IMPACT: To be requested

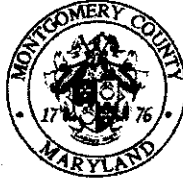
EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney, 240-777-7892

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: N/A



ROCKVILLE, MARYLAND

MEMORANDUM

January 9, 2019

TO: Nancy Navarro, President, County Council

FROM: Richard S. Madaleno Jr., Director, Office of Management and Budget *RSM*
Alexandre A. Espinosa, Director, Department of Finance *AE*

SUBJECT: FEIS for Bill 40-18, Secondhand Personal Property – Dealers - License

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

RSM:cbs

c: Dale Tibbitts, Special Assistant to the County Executive
Lisa Austin, Offices of the County Executive
Ohene Gyapong, Acting Director, Public Information Office
Eric Friedman, Director, Office of Consumer Protection
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Neil Shorb, Department of Police
Crystal Sallee, Office of Management and Budget
Richard Harris, Office of Management and Budget

Fiscal Impact Statement

Bill 40-18 - Secondhand Personal Property - Dealers – License

1. Legislative Summary

Bill 40-18 amends Chapter 44A, Sections 44A-1 and 44A-11 of the Montgomery County Code, which requires a dealer in secondhand personal property to obtain a license from the Office of Consumer Protection (OCP), report all transactions to the Police, and hold all property received for a certain period after reporting the transaction. Bill 40-18 would (1) exclude certain personal property from the definition of secondhand personal property, and (2) provide that a secondhand personal property dealer license expires one year from the date of issuance.

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.

Bill 40-18 is not expected to impact revenues and expenditures. The OCP currently issues approximately 218 Secondhand Personal Property licenses. The licensing fee is \$50 for each one-year new or renewal license. The revenues and expenditures will be monitored and reported by the OCP.

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

This legislation is not expected to impact revenues or expenditures. Any increase in revenue would be directly related to a change in the annual licensing fee, as outlined in the Executive Regulation.

During FY19, there are 218 active Secondhand Personal Property licenses that will expire on July 30, 2019. Currently, each license expires on July 30 of each year, therefore, the majority of the licenses are renewed at the same time each year (within the first half of the fiscal year). For illustrative purposes in the chart below, estimates for the next six fiscal years are set at \$11,000, which is consistent with the amount of revenue estimated for FY19. This projection reflects the current \$50 per license fee.

	FY20	FY21	FY22	FY23	FY24	FY25
Secondhand Personal Property Revenue Estimate	\$11,000	\$11,000	\$11,000	\$11,000	\$11,000	\$11,000

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

Not Applicable.

5. An estimate of expenditures related to County's Information Technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

This bill is not expected to impact expenditures related to the County's IT or ERP systems.

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill 40-18 does not authorize future spending.

7. An estimate of the staff time needed to implement the bill.

Implementation of this legislation will not impact staff. Currently, staff can successfully process and issue a Secondhand Personal Property license within two hours; the application processing time is not expected to change as a result of this legislation.

Under current law, each license expires on July 30 of each year, leading to a high volume of license renewal applications at the same time each year. Bill 40-18 would provide that licenses issued under the law are valid for a period of one year from the date of issuance, therefore, creating a more manageable workload since the volume of applications will be processed throughout the year.

Implementation of this legislation will not impact existing Department of Police staff.

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

Not Applicable.

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

Additional appropriation is not needed to implement Bill 40-18.

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

A fluctuation in the number of secondhand personal property dealers would impact revenues accordingly. If the annual licensing fee structure set forth in the Executive Regulation were to change, the revenues would be impacted accordingly.

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

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

Revenue is not expected to change as a direct result of this bill. OCP does not anticipate a significant reduction in the number of secondhand personal property dealers due to this bill. Implementation of this legislation will not have an impact on expenditures. The workload can be absorbed within existing resources.

13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

Eric Friedman, Director, Office of Consumer Protection

Captain Nicholas R. Augustine, Department of Police

Marsha Carter, Management and Budget Specialist, Office of Consumer Protection

Samuel Buo, Administrator, Office of Consumer Protection

Tracy Rezvani, Administrator, Office of Consumer Protection

Crystal Sallee, OMB Analyst, Office of Management and Budget

Richard Harris, OMB Analyst, Office of Management and Budget



Richard S. Madaleno Jr., Director
Office of Management and Budget


Date

Economic Impact Statement
Bill 40-18 Secondhand Personal Property – Dealers – Licenses

Background:

Bill 40-18 amends Chapter 44A, Sections 44A-1 and 44A-11 of the Montgomery County Code, which requires a dealer in secondhand personal property to obtain a license from the Office of Consumer Protection (OCP), report all transactions to the Police, and hold all property received for a certain period after reporting the transaction. Bill 40-18 would (1) exclude certain personal property from the definition of secondhand personal property, and (2) provide that a secondhand personal property dealer license expires one year from the date of issuance. The goal of the legislation is to provide that individuals and businesses that assist in coordination and marketing of estate sales held at the residence of the decedents are not considered secondhand personal property dealers and provide that licenses issued under the law are valid for a period of one year from the date of issuance.

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

There were no sources of information, assumptions, or needed methodologies in the formulation of this economic impact statement.

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

There are no variables that could affect economic impact estimates. As noted in the fiscal impact statement for the bill, County revenues and expenditures are not anticipated to be impacted. The OCP currently issues approximately 218 Secondhand Personal Property licenses. The licensing fee is \$50 for each one-year new or renewal license. The revenues and expenditures will be monitored and reported by the OCP. Fluctuations in the number of secondhand personal property dealers would impact revenues accordingly and the OCP does not anticipate a significant reduction in the number of secondhand personal property dealers because of this bill.

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

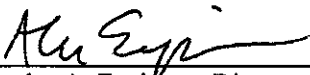
The bill will have no impact on employment, spending, savings, investment, incomes, and property values in the County.

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

See number 2.

5. The following contributed to or concurred with this analysis:

David Platt and Dennis Hetman, Finance.



Alexandre A. Espinosa, Director
Department of Finance

1/15/2019
Date

Testimony of Brette Bates

Bethesda Downsizing and Estate Sales

Support of Bill 40-18

January 15, 2019

I would like to thank the committee for holding this hearing today. I'd especially like to thank Councilmember Friedson and his staff members Cindy Gibson and Matt Higgins for their efforts to clarify the county's secondhand personal property regulations. We wholeheartedly support this bill.

Our job at Bethesda Downsizing and Estate Sales is to assist Montgomery County homeowners who are settling an estate, downsizing or moving out of their home. Many times we work in partnership with the real estate agent either before or after the house goes on the market to be sold. While the real estate agent sells the home, we sell what's inside the home. Items we sell on behalf of our clients include furniture, garage items, household necessities, clothing, art, rugs and more. Essentially, we help our clients hold their own large-scale moving sale.

We have been in this business for over ten years and have helped hundreds of Montgomery County families. It is not until the last few years that we have been notified to comply with secondhand personal property regulations. As an agent to our clients, Bethesda Downsizing does not take possession of our client's property. We do not remove their property from their home. We do not buy our client's property. The sale always takes place inside their private residence. Many times our clients are in their home during the sale helping us sell their possessions. We provide a much needed service to our clients by helping them offset their moving or other estate related expenses with proceeds from their sale.

As currently written, these regulations would require us to report most of our client's personal property to the Montgomery County Police's Pawn, Precious Metal and Secondhand Property Unit to make sure their personal property is not "stolen property". Many of our clients are elderly and/or trying to settle the affairs of their deceased loved ones. In a real world scenario, I would need to advise my clients, many of whom are already upset about leaving their home, that before we can have their estate sale, we must report their property to the police who would then add their property to a national database of stolen property for up to 45 days. Suffice to say, our clients would be dumbfounded and heartbroken at the notion of their private property being considered stolen...and potentially angry about the intrusive nature of these regulations as currently interpreted by some.

It defies common sense that the county ever intended for family heirlooms and private property of average citizens to be reported to the police before their moving sale. The list of items to be reported is exhaustive and the 45 day waiting period would be a huge burden for residents on a tight schedule to empty their home before it is transferred to the new owners.

Without this legislation, these regulations would apply to each of you when the time comes for you to hire a company to downsize, move, or settle a family member's estate. We would need to report most of your radios, televisions, electronics, computer equipment, bicycles, jewelry, leather handbags, watches, paintings, china, crystal, porcelain, art, power tools, carpets, rugs, musical instruments, and the list goes on.

The goal of the regulations as currently written is to prevent pawn shops and other secondhand property dealers from buying and selling stolen property, which we support. But to impose these regulations on ordinary county residents selling their own private property in their own private home makes no sense.

We urge you to approve this legislation.

Thank you for your time.

Testimony of Joann Cameron

AZZ Estate Services

Bill 40-18

January 15, 2019

I stand before the Montgomery County Council of Maryland in support of Bill 40-18. I too, conduct estate sales and personal property appraisals in homes throughout Maryland. Last winter I spoke with Judy Hanger, Montgomery County Police Department when she cited me for not having the Secondhand Dealers license.

Imagine that you call one of our companies to come and sell your elderly parent's house not content because the home is being sold. Under the current application of the law, we would have to spend several hours inventorying all electronics, any luxury goods such as silverware, jewelry, furs, artwork and the like. We would then have to electronically file a list of these items with an agency in another state using some kind of database, a Point Of Sale software, a Point Of Sale system that none of us use.

In the unlikely case that an identical item might show up on the Stolen Goods Database (example, silver tray with a monogram) we would be required to have kept all names and addresses and sales details in a file for one year so that the buyers could be tracked down, and would have to turn this information over to authorities. All of our business transactions would have to be made available for the police department to examine at their demand. And this can be long after the seller has been paid, the items and the buyers gone.

My question to Judy Hanger was "Who is going to be paying me to do your job?" Why should I or the owners have to take time to do this investigative work, ask customers to verify their identity and contact information, and keep a physical file in my home office for the police department?

This current regulation puts the burden of proof on us, the selling agents, to police our clients personal possessions. Whatever happened to the rule of law, *Innocent Until Proven Guilty*? Under this current regulation we have to prove items aren't stolen, rather than being served a subpoena to turn over stolen goods.

None of us here before you wish to be involved in the trafficking of stolen goods. But the reality is that stolen items are not hauled over to Grandma's house to be sold. These items can be easily sold with a smartphone on Craigslist, on many social media sites, in local flea markets and yard sales.

And if a theft victim has already made an insurance claim for stolen goods, haven't they already been made whole for their loss? Is it insurance companies or the Montgomery County pawn shops that are pushing for this regulation to apply to estate sale companies?

I would like to suggest that the police department create a website listing items reported stolen that can be accessed by the public or even sent out weekly to email subscribers. This would raise awareness and perhaps even help in tracking down stolen goods. Asking estate sale companies to do the work of the police department is an unfair burden placed on not only the companies, but the families we represent.

Thank you for your support in clarifying this rule in Bill 40-18 today.

Joann Cameron,

International Society of Appraisers, AM

AZZ Estate Services, Silver Spring, Maryland.

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GREATER WASHINGTON ESTATE SERVICES

...ESTATE AND MOVING SALES CONDUCTED
THROUGHOUT THE METROPOLITAN DC AREA...

4

Testimony before the Montgomery County Council
Tuesday, January 15, 2019
Karen Jones, Owner
Greater Washington Estate Services
Bethesda, Maryland

Good afternoon and thank you for the opportunity to speak to you in support of Bill 40 -18, and thank you to Councilmember Friedson and his staff for bringing this bill before the Council today.

With the time allotted to me, I would like to challenge the assumption that estate sale companies are dealers in secondhand personal property and define the role we play as a service industry in Montgomery County.

In Chapter 44a of the County Code, secondhand property is described as "previously-owned" goods that are being offered for sale. However, items sold in an estate sale are not "previously owned" property. They are the "currently-owned" possessions of Montgomery County residents who have sought the assistance of a professional liquidation company. At no time do we purchase, trade, or take possession of these items. They physically remain in the owner's home and remain their property before, during, and after an estate sale. In contrast to pawn shops and other second-sale businesses, the items sold in estate sales have never entered the secondary marketplace. They remain in a private home not a commercial venue.

Police department monitoring of personal property while still in the owner's possession doesn't make any sense. Stolen goods need to be stolen before they can be retrieved. Our clients retain ownership and possession of their property at all times.

The current regulation also imposes on our industry a lengthy waiting period in which to sell our client's' property. This presents an unfair and unreasonable hardship on our business. We are not dealers, auctioneers, pawnbrokers, consignment shop owners or members of the internet marketplace community. The network in which we operate is made up of realtors, moving companies, organizers, stagers and move managers. All of us must work cooperatively and within a realtor's schedule to assure that our client's homes go to market or closing on time and with no additional expense to our clients. To require us to inventory and postpone sale of a client's entire household for a month or more would essentially make our industry irrelevant. The client and their realtor would understandably move on because we would be unable to meet their most pressing need: timeliness.

Based on our testimonies today and the clarification of our role as service providers to residents of Montgomery County who hold good title to their property and wish to liquidate their personal possessions, we ask the Council to support Bill #40-18 and exempt estate sale companies from the unnecessary and unreasonable imposition of the regulations as they currently stand in the Montgomery County Code.

Thank you.

Testimony of Carol Walser
The Market House, LLC
January 15, 2019

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Good afternoon. Thank you for giving me and my fellow colleagues the opportunity to testify before you today regarding Bill 40-18 Secondhand Personal Property. I am here today in support of the proposed changes and correction by excluding businesses that assist in the organization and marketing of estate sales and other personal property sales held at the owner's residence.

My name is Carol Walser. I am the co-owner of a business called The Market House, a downsizing and estate sale service company. Our primary service is providing assistance to families that are either moving or settling an estate by conducting a personal property liquidation in their home. I have been in the business for over eight year and I still enjoy helping families and the aging community transition out of their house. However, the enforcement of registering almost all the contents of our clients homes to prove we are not selling stolen goods will not only cripple our business, but penalize our clients and prevent them from moving forward.

The fact of the matter is we are not selling second hand property. In many instances, our clients have receipts, invoices and other supporting documentation proving their ownership. In other instances, many items are inherited family heirlooms where proof of ownership is nearly impossible. In any case, many if not all of our clients do not have the luxury of time to prove ownership as most sales are driven and determined by the settlement date because the house has been sold.

Regarding the downsizing trend and urban movement, we provide an invaluable service not only to those moving, but to the community as well. The estate sale business impacts our community on an economic level that has resulted in an entirely separate weekend subculture. In addition to

generating working revenue for our client, estate sale companies service and sell items to those people who otherwise might not be able to afford it in the open retail market. We are selling gently used items at a fraction of what they cost new in a store. We understand that people shop estate sales for many different reasons, but we can all agree that it is largely driven by the family budget and the need to spend wisely. An estate sale has turned out to be a wonderful source for those everyday necessities, furniture, clothing and other miscellaneous.

More importantly, the goal of an estate sale is to sell and donate as much as we can, thereby, keeping any remaining miscellaneous out of the county landfill, which in turn, lessens the overall environmental impact on our county.

On a personal level, our estate sale service tackles an overwhelming task and becomes the very cornerstone from which a family operates when planning to move. On a professional level, some of the people who benefit from our service are real estate agents, estate attorney's, moving companies and charities, such as A Wider Circle and Habitat for Humanity. It is truly a interdependent network where the personal property liquidation is just a piece of the big puzzle.

In conclusion, I would like to state again for the record that we support these legislative changes and encourage the council to vote in our favor.

Thank you.

1/13/19

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Testimony of Amy Presley, Partner/Co-Founder of Trusted Estate Partners

Trusted Estate Partners provides comprehensive estate liquidation services to assist attorneys, bank trustees, and their clients (individuals and families) with estate settlement, and to help individuals and families who are downsizing or helping loved ones transition to independent or assisted living.

www.trustedestatepartners.com

Position on the Bill:

We are in favor of the intent of the Bill and grateful to Councilmembers Friedson and Katz for proposing common sense changes to provide relief to small businesses by eliminating the unintended impacts caused by the current definitions and requirements of Chapter 44A of the County Code. However, we believe that additional changes/clarifications to Chapter 44A are necessary to accomplish what is intended by Bill 40-18, and also to result in the additional relief needed for:

- auctioneers who provide the same service offered by on-site estate sale service businesses (only off-site);
- individuals and families going through the estate liquidation process due to a death in the family or the need to downsize/transition a family member to assisted living; and
- the Montgomery County Police, specifically the Criminal Investigations Division.

Background

As stated in the proposed Bill 40-18 (*emphasis added*):

“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

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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.”

Negative Impacts of Chapter 44A in its Current Form

- **Auctioneers and On-Site Estate Sale Businesses**

- Required to comply with stringent documentation and reporting requirements on an item-by-item basis even though their business entails the liquidation of entire estates (100% for on-site estate sale dealers and, on average, 90+% for auctioneers; auctioneers also handle other types of auctions such as commercial inventory liquidation, etc. but not singular items for sale offered by individuals, as would a pawn shop, a coin dealer, or precious metals dealer, etc.).

- Specifically, the current Chapter 44A requires:

Sec. 44A-3 (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;”

This takes extensive time and effort, creating an undue burden and resulting in significant additional expense to the businesses providing estate liquidation.

- Auctioneers are also required to store and hold all items for a period of 21 days after the records are recorded and reported to the police, or – if the “dealer” operates from a “fixed place of business” and has complied with all tagging requirements of Chapter 44A – may opt instead to withhold payment for 30 days

after item(s) are received. Not only does this create storage and management issues for auctioneers, but it also adds unnecessary time to the payout for their clients. Auctioneers may well be losing business to other auction houses located outside of Montgomery County or even out of state because of this requirement. Clients who need to receive payment sooner may elect to go elsewhere to meet their requirements.

- **Individuals and Families**

- Boggled down by requirements which increase both the time and expense related to settling their estate.
- Due to required holding time and related delay of payment for estate property, experience unnecessary hardship at a time when they are already faced with the difficulty of attempting to settle their loved one's estate or to transition a loved one to assisted living.
- May – if requiring funds from the sale of personal property from the estate to help in transitioning a loved one to assisted living – miss the opportunity to pay for an “open bed” when the opportunity arises, or be delayed in the transition while awaiting funds.
- May – if requiring funds from the sale of personal property from the estate to help offset liens against the real property or pay for other outstanding bills – be put in an untenable financial position while awaiting payout.
- Experience a delay in the sale of the real property (arguably their most valuable asset) due to the additional time required to clear and sell the personal property.

- **Montgomery County Police**

- Experience unnecessary work in reviewing extensive records produced by Auctioneers, who (as reported by Tom Weschler of Weschler's Auctioneers & Appraisers) sell, on average, 600 lots per week/2,400 per month – and that is only from one auction house.
- *(More detailed information to be provided in my verbal testimony; pending my discussion on 1/14 with Captain Mike Ward, Director of Criminal Investigations Division)*

Data Points

- **Taken from Montgomery County Crime Open Data Portal**

- From 2016 through present, there is not one single record of the possession or sale of any stolen personal property by an Auctioneer or Auction House in Montgomery County.
- From 2016 through present, there is not one single record of the possession or sale of any stolen property by an on-site Estate Sale Business.
- From 2016 through present, there are 35 records of crime involving pawn shops, with 20 of those records relating to possession or sale of stolen personal property.

- **Information and Opinions Received via Meetings with Auctioneers (including Weschler's Auctioneers & Appraisers, located in Montgomery County, and Gregory's Auctioneers & Appraisers, located in Howard County)**

- Auctioneers do not purchase items from their clients, as do pawn shops and other dealers, they merely act as consigners/agents of the sale.
- On average, Weschler's and Gregory's sell 600 lots per week/2,400 lots per month.

- Weschler's and Gregory's very rarely receive any single item brought forth from an individual for sale (in contrast to what pawn shops, coin dealers, etc. receive); and if they are presented with such an item, they increase their due diligence prior to sale.
- In 100 years of business, Weschler's Auctions has never received or sold any stolen personal property. In 60 years of business, Gregory's Auctioneers & Appraisers has never sold any stolen property and only received one stolen item – a handgun which, due to Roy Gregory's research pre-sale, was determined to have been reported as stolen 20 years prior and was immediately reported by Roy to the police.
- Auctioneers we met with are unaware of *any* sale of stolen property from any auction house within the State of Maryland. In fact, they assert that no such sale has ever been reported or taken place in Maryland. Therefore, they believe Chapter 44A to have negative impacts on their profession without providing any advantage to the police or general public.

Our Assessment of the Problem

We believe the problem with the Chapter 44A in its current form is not limited to the definition of “secondhand personal property” – which negatively impacts on-site estate sale businesses and auctioneers and is being corrected for on-site estate sale businesses within Bill 40-18 – but, rather, it is rooted in an erroneous definition of “Dealer” under the current definition in Chapter 44A Sec. 44A-1. Definitions, which currently includes “auctioneers” in the definition. One of the major issues with inclusion of “auctioneers” is that in actuality there are distinctly different definitions, and roles, for “dealer” and “auctioneer.” As defined in the Oxford English

Dictionary:

- Dealer
NOUN 1. A person who buys and sells goods
- Auctioneer
NOUN 1. A person who conducts auctions and declares goods sold

There are key differentiators between the business operations of dealers and auctioneers, with dealers being more susceptible to the receipt of and sale of stolen property. One significant difference is that dealers buy and resell goods to make a profit on the margin between the purchase and sale price, while auctioneers serve as consigners/agents for the sale of other peoples' personal property and charge for their services based on a percentage of the sale price achieved, and a buyer's premium. Another key difference is that dealers purchase goods from individuals – typically receiving single items or small groups of items and paying an agreed upon price at time of presentation/sale by the individual. In turn, they also conduct sales to individuals in a singular point-of-purchase type of sale. While, in contrast (and perhaps the most critical differentiator), auctioneers transport the personal property of an entire estate (typically 90+% of their business) to an auction house, first publicly advertise, and then publicly sell items by auction in an open forum.

The inclusion of “auctioneers” in Chapter 44A is at the root of the negative impacts to the auction business, individuals and families, and the Montgomery County Police as outlined within my testimony.

Proposed Solution (Additional Changes to Bill 40-18/Chapter 44A)

Optimally, we propose removing completely from Chapter 44A Sec. 44A-1. Definitions, the word “auctioneer.” Based on the data points as presented above, this change would not harm the police in their work or the general public, but would provide the needed relief to those negatively impacted by the inclusion of auctioneers in the definition as it stands.

If the Council does not agree with the complete removal of “auctioneers” from the definition of “dealer,” then we propose exempting auctioneers from compliance with the requirements under Chapter 44A when liquidating personal property from an estate (whether due to death or the need of a resident to transition to independent or assisted living). We believe that this would be the minimal solution required to effect a meaningful change.

At the very least, although we assert that it would not go as far as we believe is necessary and as we believe Councilmembers Friedson and Katz intended, if the Council does not agree with our proposed optimal changes, we recommend the following changes to Bill 40-18:

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 a public sale, [or],
- (2) personal property that is offered for sale [only on residential property] and is:
 - A. owned by a resident of that property; or
 - B. part of the estate of a deceased immediate past resident of that property, or part of an estate being liquidated by a current resident or POA (Power of Attorney) of a current resident to facilitate the resident(s) transition to independent or assisted living; or
- (3) 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).

My sincere thanks to the County Council for your time and attention to my testimony,


Amy Presley