ORDINANCE 2011- 15

ORDINANCE LICENSING AND REGULATING BUYING AND/OR SELLING USED GOODS OR EQUIPMENT IN THE TOWNSHIP OF OCEAN, INCLUDING, BUT NOT LIMITED TO, ANTIQUES, PRECIOUS STONES, GOLD, SILVER, PLATINUM OR OTHER PRECIOUS METALS, JEWELRY, COINS, TOOLS, TELEVISION SETS, RADIOS, RECORD OR STEREO SETS, CES, MUSICAL INSTRUMENTS, SPORTING GOODS, AUTOMOTIVE EQUIPMENT, COLLECTIBLES, GAME CARTRIDGES, DVDS, CDS, AND OTHER ELECTRONICALLY RECORDED MATERIAL, FIREARMS, CAMERAS AND CAMERA EQUIPMENT, VIDEO EQUIPMENT AND BRIC-BRAC

Section 1 Definitions.

As used in this chapter, the following term shall have the meaning indicated:

SECONDHAND DEALER

A. Except as provided in Subsection B below, any person, partnership, limited-liability company, corporation or other entity who, either wholly or in part, engages in or operates a trade or business of buying and/or selling used goods or equipment in the Township of Ocean, such as antiques, precious stones, gold, silver, platinum or other precious metals, jewelry, coins, any tools, television sets, radios, record or stereo sets, electronic devices, musical instruments, sporting goods, automotive equipment, collectibles, game cartridges, DVDs, CDs, and other electronically recorded material, firearms, cameras and camera equipment, video equipment and bric-a-brac.

B. The business of secondhand dealer shall not be deemed to include:

(1) Judicial sales or sales by executors or administrators.
(2) Occasional or auction sales of household goods sold from private homes.
(3) Auctions of real estate.
(4) The occasional sale, purchase or exchange of coins or stamps by a person at his permanent residence, or in any municipally owned building by a person who is engaged in the hobby of collecting coins or stamps, and who does not solicit the sale, purchase or exchange of such coins or stamps to or from the general public by billboard, sign, handbill, newspaper, magazine, radio, television or other form of printed or electronic advertising.

Section-2. Licensing required: advertising.

No person, partnership, limited-liability company, corporation, or other entity shall engage in business as a secondhand dealer without first obtaining a license from the Township Clerk. Advertising in any print or electronic media or by sign that any of those articles or goods referred to in Subsection A of the definition of "secondhand dealer" are being bought in any location within the Township shall constitute engaging in business as a secondhand dealer for purposes of this chapter. No person shall place or cause to be placed any advertisement for purchase of such articles or goods without stating in the advertising the license number issued to a person or entity by the Township. In any print advertisement, the license number shall appear in type no smaller than eight point in the lower-right-hand corner of the advertisement. In any advertisement in the electronic media, the license number shall be visually or audibly stated. Failure to state or indicate the license number shall be a violation of this chapter and shall be subject to the penalties established in this chapter.

Section – 3. Application process; approval or denial; appeal.

A. Upon receipt of an application completed pursuant to this chapter, the Township Clerk shall refer such application to the Chief of Police, who shall make an investigation of the prospective licensee for the purpose of determining the suitability of the applicant for licensing. The investigation shall include, but shall not be limited to, the following:

(1) The experience of the applicant in the business of purchase and sale of those articles or goods referred to in Subsection A of the definition of "secondhand dealer", although nothing in this section shall be construed to warrant denial of a license solely on the basis of lack of experience.

(2) The reputation of the applicant for fair dealing in the community, which shall be based upon credible sources. The sources shall be disclosed to the applicant in the event of a denial of any license.

(3) Any criminal record of the applicant.

(4) The type of operation contemplated to be conducted by the applicant, particularly whether the business is to be operated from a fixed location, whether it is to be conducted from a location primarily devoted to the purchase and sale of those articles and goods referred to in Subsection A of the definition of "secondhand dealer", and other factors bearing upon whether the licensed business will be of a fixed and permanent nature. This section, however, shall not be construed to require denial of any license solely on the grounds that the business is not conducted from a fixed location.

B. The Chief of Police shall complete the investigation within 30 days of the submission of a complete application to the Township Clerk. If a criminal record check has been requested within the thirty-day period and has not been received by the Chief of Police within that period, the Chief of Police, may, if all other factors are satisfactory, recommend a conditional issuance of the license subject to the finding regarding criminal record.

C. The Chief of Police shall upon completion of the investigation, recommend grant or denial of the requested license to the Township Clerk, who shall grant or deny the license. Any recommendation of the Chief of Police shall be in writing and, in the case of a recommendation of denial, shall state fully and specifically the reasons for said recommendation. If the Township Clerk accepts the recommendation of the Chief of Police to deny any license, the applicant shall be notified, in writing, within 10 days of such denial. The Township Clerk shall provide the applicant with a statement of the reason or reasons for such denial. The applicant shall have 10 days after the mailing date of the notice to request reconsideration by the Township Clerk, and shall have the opportunity to provide the Township Clerk with any information in response to that set forth in the Township Clerk's notice of denial.

D. Grounds for recommending denial of a license may include reliable information indicating that the applicant has in the past engaged in fraudulent or deceptive business practices in a business identical to or similar to the business of a secondhand dealer. A license may be denied if the investigation conducted by the Chief of Police reveals a conviction of the applicant or any of its principal officers or employees of any crime or disorderly persons offense in which deceit or misrepresentation is an element or any conviction of any crime or disorderly persons offense involving theft or receiving stolen goods, regardless of whether the applicant was a principal, accessory before the fact, after the fact, or a co-conspirator.

Upon receipt of the recommendation of the Chief of Police, the Township Clerk shall issue or deny the license accordingly, contingent upon the receipt of a bond as required by this chapter.

E. Whenever any application for a permit is denied, the applicant may appeal the denial to the Township Committee by filing a written notice of appeal within 10 days after receiving written notice of the denial of a permit to act as a secondhand dealer. The Township Committee shall hold a public hearing on the matter and may modify, affirm, or reverse the decision denying a permit. An applicant filing an appeal must pay the sum of $100 at the time the appeal is filed to cover the administrative cost of the appeal.

Section – 4. Identification of seller: required information.

A licensee shall require of each person selling used goods or equipment such as antiques, precious stones, gold, silver, platinum or other precious metals, jewelry, coins, any tools, television sets, radios, record or stereo sets, electronic devices, musical instruments, sporting goods, automotive equipment, collectibles, game cartridges, DVDs, CDs and other electronically recorded material, firearms, cameras and camera equipment, video equipment and bric-a-brac, suitable identification setting forth the true name and home address of the seller. Acceptable identification includes a valid driver's license issued by any state of the United States of America, valid government-issued identification, or photo ID and one fingerprint (preferably thumb), which will be recorded on the receipt retained by the dealer. This information shall be forwarded by e-mail or electronic transfer to the Township Police Department within 24 hours. A licensee shall complete and issue to each seller a serially numbered receipt setting forth the following information:

A. The name and business address of the licensee.

B. A detailed legible description of the item(s), and the manufacturer of the item(s). In the case of jewelry, the descriptions must include style, length, color, design, and stones, if any.

C. A statement in full of any identifying marks on the item, such as initials, names, dates, social security numbers engraved thereon, serial numbers, series numbers or any other information, which sets apart the particular object from others of the like kind.

D. If the item is purchased by weight, the troy ounce weight of the item.

E. The legible name of the clerk or employee of the licensee making the transaction.

F. The name and home address of the seller, which shall be verified by proof of identification. The receipt book shall be a record kept in the regular course of business of the licensee.

G. The actual price paid for the purchase of such item.

H. A photographed recording of the item(s) being purchased by the licensee. The photograph should be of digital JPEG format and quality, with the ability to be electronically transferred to a computer, and shall include a photograph of the identification presented by the seller, which shall be attached to the above-described serially numbered receipt.

Section – 5. Retention of articles; minimum age; revocation of license; change of location.

A. No licensee shall sell, alter or dispose of in any way any of those articles or goods referred to in Subsection A of the definition of "secondhand dealer" until seven days have elapsed after the

purchase of the same by the licensee. It shall be an affirmative defense to any prosecution or administrative proceeding brought for a violation of this section if retention for the required time period would have resulted in serious and substantial economic losses to the purchaser, or the probability of such losses was significant due to rapid and highly fluctuating market conditions. A person or entity charged with a violation of the provision shall prove by a preponderance of the evidence the existence of the market conditions giving rise to this defense. Market conditions, in order to be defense hereunder, must be such that financial analysts would characterize trading as at or approaching a level or occurrence so as to clearly distinguish trading conditions from normal variations in market movement in response to economic news or other events.

B. No licensee shall purchase any item covered by this chapter from any person under the age of 18, or in the absence of providing prior notification of the proposed purchase to the Chief of Police, or designee, identifying the person from whom such purchase is to be made and the item to be purchased.

C. If any licensee shall be convicted of robbery, burglary, theft, receiving stolen goods or any other crime involving moral turpitude, the Township Committee may, after notice and public hearing, revoke the license issued to the licensee.

D. A licensee shall have the right to change the location of the licensed business, provided that the licensee notifies the Township Clerk, in writing, of the street address of the new location of the business.

E. All scales used by licensee shall be certified by Weights and Measures. Licensee shall also be required to establish and follow all requirements set forth by Weights and Measures.

F. All scales used by the licensee shall be located within the establishment in a location that is visible to any and all patrons.

Section – 6. Recordkeeping; posting and assignment of license.

A. A licensee shall maintain duplicate copies of all issued seller receipts and photographs, in legible form, for a period of at least two years from the date of purchase by the licensee. This information shall be forwarded by e-mail or electronic transfer to the Township Police Department within 24 hours.

B. The license issued to the licensee shall be posted in a conspicuous place at the location of the licensed business.

C. No license shall be assignable by the licensee.

Section – 7. Bond.

Each licensee shall deliver a bond to the Township Clerk, executed by the applicant as principal, and executed by a surety company authorized to do business under the laws of the State of New Jersey, as surety. The bond shall be subject to the review and approval by the Township Attorney, and be in the penal sum of $10,000, conditioned upon the due and proper observance of and compliance with the provisions and requirements of all existing or future Township ordinances relating to the conduct of the secondhand dealer business, and conditioned also that the bond shall be and remain for the benefit of any

person or persons who shall have received judgment against a licensee by reason of any damage sustained by any such person as a result of the operations of the licensee, which damage shall be established by a judgment of a court of proper jurisdiction. The bond shall contain the following language: "The obligation of this bond shall, in addition to the Township of Ocean, be and remain for the benefit of any person who shall obtain a judgment against the obligor as a result of damage sustained in operation pursuant to any license granted by the Township of Ocean. The bond shall be kept for a minimum of one year from the date of issuance of license and must be renewed annually along with the license.

Section – 8. Fees; period of license validity.

The nonrefundable fee for initial application and license is $200. License is renewable during the month of January of each year and shall expire on December 31st of the calendar year. The annual renewal fee for a license is $125. A license is valid for a one-year period from the date of its issuance.

Section – 9. Violations and penalties.

Any person, partnership, limited-liability company, corporation, or other entity who shall violate any provision of this chapter shall, upon conviction thereof, be subject to the maximum fines and penalties established under N.J.S.A. 40:49-5, and as same shall be amended from time to time. Each and every day a violation of this chapter shall exist shall constitute a separate violation.

Section – 10. Time limit for conformance.

Any person, partnership, limited-liability company, corporation, or other entity engaging in the business of a secondhand dealer shall conform to the provisions of this chapter within 60 days following the effective date of this chapter.

Section – 11. This Ordinance repeals any inconsistent ordinance or ordinances or part or parts thereof.

Section – 12. This Ordinance shall take effect immediately upon its final passage and publication as required by law.

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Ocean held on the 11th day of August, 2011, and will be considered for second reading and final passage at a meeting of the Township Committee to be held on the 8th day of September, 2011, at the Municipal Building located at 50 Railroad Avenue, Waretown, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

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DIANE B. AMBROSIO, RMC
Township Clerk, Township of Ocean