

ORDINANCE #14-15

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER V, SECTION 3 (“KEEPING OF RECORDS CONCERNING THE PURCHASE OF PRECIOUS METALS, GEMS OR COINS”) OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF KEYPORT TO REQUIRE THE LICENSING OF DEALERS WHO PAWN OR BUY PRECIOUS METALS, JEWELRY AND SECONDHAND GOODS WITHIN THE BOROUGH OF KEYPORT.

WHEREAS, the Mayor and Council of the Borough of Keyport have previously adopted an ordinance regulating commercial purchasers of precious metals, gems or coins; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the Borough of Keyport to amend and supplement these regulations in order to assist law enforcement officials and victims of property theft by requiring minimum identification, reporting, maintenance and distribution criteria for dealers licensed to buy and/or pawn precious metals and secondhand goods within the Borough of Keyport.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Keyport that the Revised General Ordinances of the Borough of Keyport, Chapter V, Section 3 (“Keeping of Records Concerning the Purchase of Precious Metals, Gems or Coins”) be and hereby is amended and supplemented set forth herein.

SECTION I. Chapter V, Section 3 of the Revised General Ordinances of the Borough of Keyport is hereby revised, amended and supplemented to read as follows:

5-3 REGULATIONS CONCERNING DEALERS OF PRECIOUS METALS, GEMS, COINS AND OTHER SECONDHAND GOODS.

5-3.1 Purpose and General Prohibition. The purpose and intent of this section is to assist law enforcement officials and victims of crime in recovering stolen precious metals and other secondhand goods by requiring minimum identification, reporting, maintenance and distribution criteria for dealers licensed to buy and pawn these goods within the Borough of Keyport.

No person shall use, exercise, or carry on the business, trade, or occupation of the buying or pawning of precious metals or other secondhand goods without complying with the requirements of this section in the exact manner described herein.

5-3.2 Definitions. As used in this section, the following terms shall have the meanings indicated:

Acceptable identification shall mean a current valid New Jersey driver’s license or identification card, a current valid photo driver’s license issued by another U.S.

state, a valid United States passport, or other verifiable U.S. government-issued identification, which will be recorded on the receipt retained by the dealer and subsequently forwarded to the Keyport Police Department upon request.

Chief of Police shall mean the Chief of Police of the Keyport Police Department or his/her duly authorized designee.

Dealer shall mean any person, partnership, limited liability company, corporation, or other entity who, either wholly or in part, engages the buying or pawning, within the Borough of Keyport, of precious metals, jewelry, or other secondhand goods from members of the public, including pawnbrokers as defined herein,.

Itinerant business shall mean a business that buys or pawns precious metals, jewelry, or other secondhand goods from members of the public on an intermittent basis or at varying locations.

Pawnbroker shall mean any person, partnership, association or corporation lending money on deposit or pledge of personal property, other than in action, securities or printed evidences of indebtedness, purchasing personal property on condition of selling it back at a stipulated price; or doing business as furniture storage warehousemen and lending money on goods, wares or merchandise pledged or deposited as collateral security.

Precious metals shall mean gold, silver, platinum, palladium, and their alloys as defined in N.J.S.A. 51:5-1 et seq. and 51:6-1 et seq.

Public shall mean private individuals, exclusive of retailers, wholesalers, and other merchants.

Reportable transaction shall mean any transaction conducted between a dealer and a member of the public in which precious metals, jewelry, or any other secondhand goods are purchased by or pawned to the dealer. This term shall not include wholesale transactions or transactions between merchants.

Secondhand goods shall mean used goods such as antiques, gold, silver, platinum, or other precious metals, jewelry, coins, gemstones, gift cards, any tools, telephones, typewriters, word processors, GPS devices, computers, computer hardware and software, 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, furniture, clothing, or any other valuable articles. For the purposes of this section, secondhand goods shall not include goods transacted in the following manner: i) judicial sales or sales by executors or administrators; ii) occasional or auction sales of household goods sold from private homes; iii) auctions of real estate; iv) the occasional sale,

purchase, or exchange of coins or stamps by a person at his permanent residence or in any municipally owned building 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, goods sold at a private residence at a garage sale.

Seller shall mean a member of the public who sells or pawns used goods such as precious metals, jewelry, or any other secondhand goods to a dealer.

Transient buyer shall mean one who maintains or intends to maintain its business of buying or pawning, within the Borough of Keyport, precious metals, jewelry, or other secondhand goods from members of the public, for a period of less than six (6) months.

5-3.3 License Requirement for Dealers.

a. License Requirement. No dealer shall engage in the business of buying or pawning of precious metals or other secondhand goods within the jurisdiction of the Borough of Keyport, without having first obtained a license therefor from the Keyport Police Department, which license shall bear a number issued by the Keyport Police Department.

b. License Application. The application for a license to the Keyport Police Department shall set forth the name, date of birth, and address of the dealer, whether or not he or she is a citizen of the United States, and whether or not he or she has ever been convicted of any crime(s), disorderly persons offense(s), or municipal ordinance violation (s), and the date(s) thereof.

c. Advertisements. Advertising in any print or electronic media or by sign that any precious metals, jewelry or secondhand goods are being bought in any location within the municipality shall constitute engaging in business as a dealer of secondhand goods for purposes of this section. No dealer 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 municipality. 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 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 section and shall be subject to the penalties established in Section 5-3.9 below.

d. Location. Licensees may not operate at any location other than site specified in the license. Licensees operating at multiple locations must have each location separately licensed. Each location must be permanent. However, a dealer shall have the right to change the location of the licensed business, provided that he or she notifies the Chief of Police, in writing, of the street address of said new location.

e. Itinerant Businesses and Transient Buyers. Except as specified in this section, itinerant businesses and transient buyers are not eligible for licensure and are prohibited from operating in the Borough, unless participating in an event, such as a flea market, that is Borough-sponsored or authorized to be conducted on Borough property or elsewhere within the Borough shall not require a license and shall be permitted to sell, but not buy or pawn, precious metals, jewelry or secondhand goods during such event.

5-3.4 Application Process for Dealers; Approval or Denial.

a. Investigation. Upon receipt of an application completed pursuant to this section, the Keyport Police Department shall refer such application to the Chief of Police, who shall make an investigation of the prospective licensee, pursuant to this section 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/or pawning of precious metals or secondhand goods, 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 made among credible sources, which sources shall be disclosed to the applicant in the event of a denial of any license.

(3) Any criminal record of the applicant including any past convictions for any crime(s), disorderly persons offense(s), or municipal ordinance violation(s) within this or any other jurisdiction. The Chief of Police shall, as part of the initial application process and annual renewals, require fingerprint criminal background checks through the Federal Bureau of Investigation, Criminal Justice Information Services Division, for the applicant and all owners and employees, which may require payment of additional fees by 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 precious metal or other secondhand goods, and other factors bearing on whether the licensed business will be of a fixed and permanent nature.

b. Time for Investigation. The Chief of Police shall complete any investigation pursuant to this section within thirty (30) days of the submission of the application to the Keyport Police Department, fully completed by the applicant. 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. Recommendation by Chief. The Chief of Police shall, upon completion of the investigation, recommend “grant” or “denial” of 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 recommendation of the Chief of Police is to deny any license, the applicant shall be notified in writing within ten (10) days of such denial and shall forward to the applicant a statement of the reason or reasons for such denial.

d. Grounds for Denial. Grounds for recommending denial of 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 a dealer in secondhand goods. A license may be denied if the investigation reveals a conviction of the applicant or any of its principal officers or employees of any crime(s), disorderly persons offense(s) in which deceit or misrepresentation is an element; or any conviction of any crime(s), disorderly persons offense involving theft or the receiving of stolen goods, regardless of whether the applicant was a principal, accessory before the fact, after the fact, or a co-conspirator; or any prior municipal ordinance violation(s) by the applicant or any of its principal officers or employees in this or any other jurisdiction. A license may be denied if the applicant fails to demonstrate an ability to satisfactorily comply with the electronic reporting requirements specified in this section, the retention and inspection requirements of this section, or any other portion of this section. Upon receipt of the recommendation of the Chief of Police, the Keyport Police Department shall issue or deny the license accordingly.

e. Hearing. Whenever any application for a permit is denied, the applicant shall be entitled to a hearing before the Borough Administrator or another official designated by the Borough Administrator, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such denial. Any applicant exercising the right to appeal must file a written notice of appeal within ten (10) days of receiving written notice of denial of a license.

f. No Assignment. No license shall be assignable by the dealer.

5-3.5 Identification of Seller; Recordkeeping Requirements for Dealers.

For every reportable transaction between a dealer and the public, the dealer shall be required to do as follows:

a. Identification. Require of each person selling or pawning precious metals, jewelry or other secondhand goods acceptable identification.

b. Declaration of Ownership. Require each seller to execute a “declaration of ownership” which shall contain the following certification: “My signature confirms that I

am the sole legal owner of and legally authorized to sell the goods being sold. By signing below, I certify that I did not obtain and do not possess the identified goods through unlawful means. I am the full age of eighteen years and the identification presented is valid and correct.”

c. Receipts. Record and issue to each person selling or pawning precious metals, jewelry or other secondhand goods on a sequentially-numbered receipt:

(1) The name, address, and telephone number of the purchaser, including the clerk or employee of the licensee making the purchase;

(2) The name, address, date of birth, and telephone number of the seller or sellers;

(3) A photographed recording of the seller in a format acceptable to the Chief of Police, along with a physical description of the seller, including height and weight (approximate), hair color, eye color, facial hair, if any, etc.;

(4) A photographed recording of the seller’s presented acceptable identification in a format acceptable by the Chief of Police;

(5) A photographed recording of all items sold in a format acceptable by the Chief of Police. When photographing, all items must be positioned in a manner that makes them readily and easily identifiable. Items should not be grouped together when photographing or imaging. Each item should have its own photograph;

(6) The receipt number, which shall be also listed on the subject article;

(7) A detailed, legible description of the item(s) and the manufacturer and model of the item(s) if known; in the case of jewelry, the descriptions must include style, length, color, design, and stones, if any; any identifying marks, including numbers, dates, sizes, shapes, initials, names, monograms, social security numbers engraved thereon, serial numbers, series numbers, or any other information, which sets apart the particular object from others of like kind;

(8) The price paid for the purchase or pawn of the item(s);

(9) If precious metals, the net weight in terms of pounds Troy, pennyweight (Troy) or kilograms/grams; fineness in terms of karats for gold, and sterling or coin for silver, in accordance with N.J.S.A.51:5-1 et seq. and 51:6-1 et seq.;

(10) The time and date of the transaction.

d. Electronic Database. The information outlined in subsection (c) above must additionally be electronically documented through the use of an electronic database system authorized by the Chief of Police. Installation and training in this software will be made mandatory as of the effective date of this section and licensing will be conditional upon compliance with proper use of the system as described herein. These records shall be subject to the inspection of any authorized police officer or any sworn law enforcement officer acting in the performance of his or her duty as set forth in subsection (f) below. Through the use of applicably required computer equipment, and using the electronic format approved by the Chief of Police, every dealer shall enter all reportable transactions into the electronic database by the end of the close of business on the same date as the purchase or receipt of property for pawn or consignment. The information entered must contain all pertinent information outlined in subsection (c) above.

e. Backup Paper Records. In the event of a database failure, or dealer's computer equipment malfunction, all transaction information is required to be submitted on paper forms approved by the Chief of Police within 24 hours from the date of purchase. In the event that paper forms are used, the dealer is responsible to enter all transaction information set forth in subsection (c) above into the database as soon as possible upon the dealer's equipment being repaired or replaced, or the database coming back into service. Failure by the dealer to properly maintain computer equipment in a reasonable fashion, or failure by the dealer to replace faulty computer equipment, may result in the dealer being cited for a violation of this section and subsequently being subject to the penalties set forth in Section 5-3.9 above.

f. Police Access. It shall be the duty of every dealer, and of every person in the dealer's employ, to admit to the premises during business hours any member of the Keyport Police Department to examine any database, book, ledger, or any other record on the premises relating to the reportable transactions of precious metals or other secondhand goods, as well as the articles purchased or received and, where necessary, relinquish custody of precious metals, jewelry or secondhand goods.

5-3.6 Retention; Revocation and Other Restrictions.

a. Generally. All precious metals, jewelry and other secondhand goods purchased, received for pawn, or received for consignment as described above, are to be made available for inspection by the Chief of Police or designee thereof at the designated business address for a period of at least fifteen (15) calendar days from the date the transaction information is actually reported to the Chief of Police. All precious metals, jewelry or other secondhand goods subject to inspection must remain in the same condition as when purchased or received for pawn and shall not be sold, disposed of, changed, modified, or melted by the dealer until the fifteen-day retention period has expired.

b. Dealer Protection. Upon probable cause that goods held by a dealer are stolen, and providing that the seller signed the mandatory declaration of ownership

required by Section 5-3.5(b) upon the sale of those goods, a law enforcement officer with jurisdiction may charge the seller with theft by deception under N.J.S.A. 2C:20-4 on behalf of the dealer, who shall be considered the “victim” of the offense for the purposes of N.J.S.A. 2C:43-3. The officer shall seize the goods, provide the dealer with a receipt, and issue a criminal complaint against the seller for theft by deception and any other criminal charges for which the officer has probable cause that the seller has committed. If convicted of theft by deception and if so found by an order of a court of valid jurisdiction, the seller will be responsible for providing restitution to the dealer under N.J.S.A. 2C:44-2 for the amount paid by the dealer to the seller for the stolen goods.

c. Paper Records. In addition to all other reporting requirements, every dealer shall maintain, for at least five (5) years, a paper record of all purchases of precious metals, jewelry and other secondhand goods in the form prescribed Section 5-3.5 above.

d. Purchase from Minors. No dealer shall purchase any item covered by this section from any person under the age of 18 or in the absence of providing prior notification of such purchase to the Chief of Police or business designee identifying the individual from whom such purchase is to be made and the item to be purchased.

e. Suspensions and Revocations. The Chief of Police is hereby empowered to suspend or to revoke any dealer’s license and rights to operate thereunder for the grounds stated below. This penalty shall be in addition to any fines and penalties the dealer may incur pursuant to Section 5-3.9 below.

(1) Grounds for suspension. The following shall constitute grounds for suspension: violation of any provisions of this section, including failure to comply with any training or fees associated with the electronic database software system utilized by the Borough; violation of any other statute, regulation or local ordinance; or any other illegal, improper or fraudulent activity.

(2) Grounds for revocation. The following shall constitute grounds for revocation: a third violation under this section; a second violation under this section less than one (1) year after an earlier violation under this section; conviction for a criminal offense within this or any jurisdiction; or multiple violations of any other regulations or local ordinances within this or any jurisdiction.

(3) Procedure. Upon determination that appropriate grounds exist and that a suspension or revocation is warranted, the Chief of Police shall issue a written notice of suspension or revocation of license to the offending dealer, with copies to the Borough Administrator and the Borough Clerk, which shall set forth the grounds for the suspension or revocation, and notify the dealer that, unless a timely appeal is filed with the Borough, it is to immediately cease engaging in the business of purchasing for resale, receiving for pawn and/or selling precious metals, jewelry and/or other secondhand goods in the Borough. The notice shall

advise the dealer of the right to appeal within ten (10) days of receiving the notice. If the dealer appeals this determination, the suspension or revocation shall not go into effect until the appeal has been adjudicated.

(4) **Reinstatement of Suspended License.** Suspended licenses may be reinstated only when the grounds leading to the suspension have, in the determination of the Borough Administrator, upon the advice of the Chief of Police, been cured, corrected, or appropriately rectified.

f. Appeal. Any applicant wishing to appeal a suspension or revocation shall be entitled to a hearing before the Borough Administrator. Any applicant exercising the right to appeal must file a written notice of appeal with the Borough Clerk within ten (10) days of receiving written notice of revocation or suspension of license. The Borough Administrator shall review the stated grounds for the suspension or revocation and shall issue an appropriate disposition of suspension, revocation, or reinstatement. If it is determined that revocation is the appropriate disposition, the dealer must relinquish his or her license and must immediately and indefinitely cease operating as a dealer of precious metals, jewelry or other secondhand goods within the municipality.

5-3.7 RESERVED.

5-3.8 Fees, License Term.

a. A nonrefundable fee for initial application and license for a dealer is \$200. The annual renewal fee for a license is \$150. These fees are separate from and in addition to any fees incurred by the Borough in accordance with Section 5-3.4(a)(3) above. Payments are to be made in the manner directed by the Municipal Clerk.

b. Licenses issues pursuant to this section are valid for one year, from January 1 through December 31. Initial applications and applications for renewal must be submitted no later than October 1.

5-3.9 Violations and Penalties. Violation of any provision of this section by any dealer shall, upon conviction thereof, be punished by a fine not in excess of the limitations of N.J.S.A. 40:49-5 or by a term of imprisonment or a period of community service not exceeding 90 days in addition to a suspension or revocation of operating license as provided in Section 5-3.6 above.

Each and every violation shall be considered a separate violation. Each violation shall result in an additional suspension period. Any person who is found guilty of violating the provisions of this section within one (1) year of the date of a previous violation and who was fined for the previous violation may be sentenced by the court to an additional fine as a repeat offender and, in addition, may be subject to revocation proceedings as provided in Section 5-3.6 above. The additional fine imposed as a repeat offender shall not be less than the minimum or exceed the maximum fine provided herein, and same shall be

calculated separately from the fine imposed for the violation of this section.

5-3.10 Implementation

a. All dealers shall be licensed as of October 1, 2015.

b. Nothing contained in this section is intended to replace any preexisting statutory requirements governing pawnbrokers, as in N.J.S.A. 45:22-1 et seq., the sale of precious metals as in N.J.S.A. 51:6A-1 et seq., the sale of secondhand jewelry as in N.J.S.A. 2C:21-36 et seq., or any other statutory provision regarding any subject matter discussed herein.

SECTION II. All ordinances and provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed as to the extent of such inconsistency.

SECTION III. If any section, subsection, part, clause or phrase of this Ordinance shall be declared invalid by Judgment of any Court of competent jurisdiction, the subsection, part, clause or phrase shall be deemed to be severable from the remainder of this Ordinance.

SECTION IV. This Ordinance shall take effect immediately after final passage and publication as required by law.

Introduced: September 22, 2015

Public Hearing: October 6, 2015

Adopted: October 6, 2015

Valerie T. Heilweil, RMC
Borough Clerk

Harry M. Aumack, II, Mayor
Borough of Keyport