Ord.#9-2016

AN ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE CREATING A UNIFIED ELECTRONIC REPORTING SYSTEM FOR DEALERS IN PRECIOUS METALS AND OTHER SECONDHAND GOODS

WHEREAS, the theft of property negatively affects the residents of Mount Olive and the surrounding area and has a negative financial impact on citizens and businesses; and

WHEREAS, the Township Council believes that a thorough investigation, identification, maintenance of records and licensing of second hand dealers in the Township of Mount Olive is necessary and would be in the best interest of public safety and general welfare, consistent with and in accordance with N.J.S.A. 51-5-1 et seq. and N.J.S.A. 51:6-1 et seq; and

WHEREAS, it is the purpose and intent of this legislation to assist law enforcement officials and victims of crime in recovering stolen precious metals, gems, gemstones, and/or other property by requiring electronic reporting, maintenance and distribution criteria for secondhand and transient dealers; and

WHEREAS, the use of electronic reporting systems for this type of information is common across the United States. These systems have proven to dramatically increase law enforcement's ability to efficiently collect transaction data, to make matches of sold or pawned property to stolen property, and to identify trends in the selling or pawning of stolen property; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, pursuant to this Chapter, secondhand dealers of goods within the Township of Mount Olive are hereby required to submit transaction data, in an electronic format after being so informed by the Chief of Police of the Township of Mount Olive; and

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Mount Olive, County of Morris, that Chapter 294 of the Code of the Township of Mount Olive be amended as follows:

ARTICLE IV

Dealers in Precious Metals, Gems and Secondhand Goods

1. Purpose and Intent.
2. Definitions.
3. License requirement for dealers.
4. Application process for dealers; approval or denial.
5. Identification of seller; recordkeeping requirements for dealers.
6. Retention; revocation; other restrictions.

7. Bond.

8. Fees; period of license validity.

9. Violations and penalties.

10. Time limit for conformance; repealer; severability.

ARTICLE IV

Dealers in Precious Metals, Gems and Secondhand Goods

§ 1 Purpose and Intent

The purpose and intent of this chapter 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 licensed dealers in these goods.

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

§ 2 Definitions

ACCEPTABLE IDENTIFICATION - means a current valid New Jersey Driver's License or Identification Card, a current valid photo driver's license issued by another US state, a valid United States Passport, or other verifiable US Government issued identification with address, which will be recorded on the receipt retained by the dealer and subsequently forwarded to the Mount Olive Police Department on request. All of the above listed identification procedures require the Dealer to capture/record evidence of the person's current address.

DEALER - means any person, partnership, limited liability company, corporation, or other entity who, either wholly or in part, engages in or operates any of the following trades or businesses: the buying for purposes of resale of precious metals, jewelry, or other secondhand goods as defined herein; pawnbrokers as defined herein; itinerant businesses as defined herein. For the purposes of this ordinance, transient buyers, as defined herein, are subject to the same licensing and reporting requirements as any other dealers.

ITINERANT BUSINESS - means a dealer who conducts business intermittently within the Township of Mount Olive or at varying locations.

MUNICIPAL CLERK - means the statutory officer whose duties are defined in N.J.S.A. 40A:9-133 and may refer to the duly appointed clerk of the "city," "town," "township," "village," or "borough."

PAWNBROKER - means any person, partnership, association or corporation: lending money on deposit or pledge of personal property, other than choses 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 - means gold, silver, platinum, palladium, and their alloys as defined in N.J.S.A. 51:5-1 et seq. and N.J.S.A. 51:6-1 et seq.

PUBLIC - means individuals and retail sellers, not to include wholesale transactions or transactions between other merchants.

REPORTABLE TRANSACTION - means every transaction conducted between a dealer and a member of the public in which precious metals, jewelry, or any other secondhand goods as defined herein are purchased or pawned.

SECONDHAND GOODS - means 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, and other valuable articles. For the purposes of this ordinance, 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.

SELLER - means a member of the public who sells or pawns used goods such as precious metal, jewelry, or other secondhand goods to a dealer.

TRANSIENT BUYER - means a dealer, as defined herein, who has not been in a registered retail business continuously for at least six (6) months at any address in the Township of Mount Olive where the Dealer is required to register or who intends to close out or discontinue all retail business within six (6) months.

§ 3 License Requirement for dealers

No person, partnership, limited liability company, corporation, or other entity shall engage in the business of buying, selling, or pawning of precious metals or other secondhand goods, as defined above, within the jurisdiction of the Township of Mount Olive, without having first obtained a license therefore from the Municipal Clerk, which license shall bear a number issued by the Municipal Clerk. The application for a license to the Municipal Clerk 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. Advertising in any print or electronic media or by sign that any of those articles or secondhand goods referred to in § 2 above are being bought in any location within the Township of Mount Olive shall constitute engaging in business as a dealer of secondhand goods for purposes of this chapter. No person, partnership, Limited Liability Company, corporation or other entity 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 of Mount Olive. 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 chapter and shall be subject to the penalties established in § 9.

§ 4 Application process for dealers; approval or denial

A) Upon receipt of an application completed pursuant to this chapter, the Municipal Clerk shall refer such application to the Chief of Police, who shall make an investigation of the prospective licensee, pursuant to this chapter 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 § 2 above, 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 may, as part of the application process, require a fingerprint criminal background check through the Federal Bureau of Investigation, Criminal Justice Information Services Division, which may require an additional fee from 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. This section shall not be construed to require denial of any license solely on the grounds that the business is not from a fixed location or that the applicant is a transient buyer or itinerant business, however applicants who fall under the category of a transient buyer or itinerant business must state with specificity on the license application the business address where transaction records required by § 6(D) of this chapter will be stored as well as the location where purchased goods will be retained during the mandatory inspection period required under § 6(A).

B) The Chief of Police shall complete any investigation pursuant to this chapter within thirty (30) days of the submission of the application to the Municipal Clerk, 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) The Chief of Police shall, upon completion of the investigation, recommend "grant" or "denial" of the license to the Municipal 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 Municipal Clerk accepts the recommendation of the Chief of Police to deny any license, the applicant shall be notified in writing within ten (10) days of such denial and the Clerk shall forward to the applicant a statement of the reason or reasons for such denial.

D) 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 reporting requirements specified in § 5, the retention and inspection requirements of § 6, or any other portion of this chapter. Upon receipt of the recommendation of the Chief of Police, the Municipal Clerk shall issue or deny the license accordingly, contingent upon the receipt of a bond as required by § 7 of this chapter.

E) Whenever any application for a permit is denied, the applicant shall be entitled to a hearing before a three-person panel appointed by the Chief of Police, 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 to act as a dealer of secondhand goods.

F) No license shall be assignable by the dealer.

§ 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) Require of each person selling or pawning precious metals or other secondhand goods acceptable identification as defined above in §2

B) 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 am 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) Record and issue to each person selling or pawning such goods on a sequentially numbered receipt:

a. the name, address, and telephone number of the purchaser, including the clerk or employee of the licensee making the purchase;

b. the name, address, date of birth, and telephone number of the seller or sellers;

c. 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.;

d. a photographed recording of the seller's presented acceptable identification, as set forth in § 2, in a format acceptable by the Chief of Police;

e. 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.

f. the receipt number;

g. 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;

h. the price paid for the purchase or pawn of the item(s);

i. 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, N.J.S.A. 51:6-1 et seq.;

j. the time and date of the transaction.

D) 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 chapter 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 their 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) 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 twenty-four (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 chapter and subsequently being subject to the penalties for doing so including revocation of the dealer's license as described in § 6.

F) It shall be the requisite 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 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 those articles as provided in § 6. Itinerant businesses and transient buyers will be responsible for notifying the Chief of Police of the address where these records and articles will be stored.

§ 6 Retention; revocation; other restrictions

A) All precious metals and 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 seven (7) calendar days from the date the transaction information is actually reported to the Chief of Police in the approved manner described above in § 5 except for precious metals and jewelry, which must be maintained for at least ten (10) business days or for the statutory period provided in N.J.S.A 2C:21-36(d). All precious metal 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 retention period has expired. Itinerant businesses and transient buyers will be responsible for notifying the Chief of Police of the location where the purchased item(s) are being held.

B) Upon probable cause that goods held by a dealer are stolen, and providing that the seller signed the mandatory statement required by § 5(B) upon the sale of those goods, a law enforcement officer with jurisdiction should 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) In addition to all other reporting requirements, every dealer shall maintain for at least five years, a written record of all purchases of precious metals and other secondhand goods in the form prescribed in § 5(C).

D) No dealer 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 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) **Suspension.** The Chief of Police or a designee thereof is hereby empowered to temporarily suspend for cause any dealer's license and rights to operate there under. This penalty shall be in addition to any fines and penalties the dealer may incur pursuant to § 9 of this chapter.

i. Grounds for suspension. The following shall constitute grounds for suspension: violation of any provisions of this chapter, including failure to comply with any training or fees associated with the electronic database software system in use by the Township of Mount Olive; violation of any other statute, regulation, or local ordinance; or any other illegal, improper, or fraudulent activity.

ii. Procedure for suspension. Upon determination that appropriate grounds exist and that a suspension is warranted, the Chief of Police or a designee thereof shall issue a written notice of suspension of license to the offending dealer and to the Municipal Clerk, which shall set forth the grounds for the suspension and notify the dealer of his or her right to appeal pursuant to subsection (H). A temporary suspension shall issue immediately, pending the outcome of any appeal taken. Suspended dealers must immediately cease engaging in the business of purchasing for resale, receiving for pawn, and/or selling of precious metals and/or other secondhand goods in the Township of Mount Olive until reinstatement.

iii. **Reinstatement.** Suspended dealers may be reinstated only when the grounds leading to the suspension have, in the determination of the Chief of Police or the Chief's designee, been cured, corrected, or appropriately rectified; or if reinstatement is deemed appropriate by the three-person panel appointed by the Chief of Police, upon the timely filing of an appeal as provided in subsection (H).

F) **Revocation.** A license issued under this chapter may be revoked by the Municipal Clerk upon written recommendation from the Chief of Police or the Chief's designee that the dealer is no longer qualified, capable or competent to comply with the requirements of this chapter. This penalty shall be in addition to any fines and penalties the dealer may incur under § 9.

i. Grounds for revocation. The following shall constitute grounds for revocation: a third violation under this chapter; a second violation under this chapter less than one year after an earlier violation under this chapter; 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.

ii. Procedure for revocation. Upon a determination that appropriate grounds exist and that a revocation is warranted, the Chief of Police or the Chief's designee shall so report to the Municipal Clerk in writing. A temporary suspension will immediately and automatically issue, if one is not already in effect, pending the outcome of the charge. A three-person panel, appointed by the Chief of Police, shall review the stated grounds for revocation and the panel shall issue an appropriate disposition of suspension, revocation, or reinstatement. If the panel determines that revocation is the appropriate disposition, it shall set forth the grounds for the same in writing in the form of a notice of revocation, which shall be provided to the dealer. The notice shall advise the dealer of the right to appeal. If the panel determines that suspension is the appropriate disposition, it shall provide the dealer with a notice of suspension that shall advise the dealer of the right to appeal. Following revocation, the dealer must relinquish his or her license and must immediately and indefinitely cease operating as a dealer of precious metals or other secondhand goods within the Township of Mount Olive.

G) **Appeal.** Any applicant wishing to appeal an issuance of a suspension or revocation shall be entitled to a hearing before a three-person panel, appointed by the Chief of Police, at which time the applicant shall be permitted to introduce such evidence as may be deemed relevant to such suspension or revocation. Any applicant exercising the right to appeal must file a written notice of appeal within ten (10) days of receiving written notice of revocation or suspension of license.

H) A dealer shall have the right to change the location of the licensed business within the Township of Mount Olive, provided that he or she notifies the Municipal Clerk, in writing, of the street address of said new location.

§ 7 Bond

Each dealer covered under this chapter shall deliver a bond to the Municipal 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 review and approval by the Municipal Attorney, as defined

in N.J.S.A. 40A: 9-139, and shall be in the penal sum of $10,000, conditioned for the due and proper observance of and compliance with the provisions and requirements of all ordinances of the municipality in force or which may be adopted respecting the conduct of this 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 the dealer licensed under this chapter, which damage shall be established by a judgment of a court of proper jurisdiction. Said bond shall contain the following language: "The obligation of this bond shall, in addition to the [party municipality], be and remain for the benefit of any person who shall obtain a judgment against obligor as a result of damage sustained in operation pursuant to any license granted under this chapter." Said 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.

§ 8 Fees; period of license validity

A nonrefundable fee for initial application and license for a pawnbroker or a dealer in precious metals or other secondhand goods, as covered under this chapter is $300. The annual renewal fee for a license is $250. Payments are to be made in the manner directed by the Municipal Clerk. A license is valid for a one-year period from the date of its issuance.

§ 9 Violations and penalties

Violation of any provision of this chapter 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 ninety (90) days in addition to a suspension or revocation of operating license as provided in § 6(F) and § 6(G) 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 chapter within one 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 § 6(G). 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 chapter.

§ 10 Time limit for conformance; repealer; severability

A) Any person, partnership, limited liability company, corporation, or other entity engaging in the business of a pawnbroker, or a dealer in precious metals or other secondhand goods shall conform to the provisions of this chapter within ninety (90) days following the effective date of this chapter.

B) Nothing contained in this chapter is intended to replace any pre-existing 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.

C) If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

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ATTEST: Joe Nicastro, Council President

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Michelle Masser, Township Clerk