

ORDINANCE O- -13

AN ORDINANCE AMENDING CHAPTER 5 OF THE GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE, AND CREATING SUBCHAPTER 33, ENTITLED “LICENSING FOR SHOP LOCAL REWARD PROGRAMS”

WHEREAS, pursuant to Resolution No. 87-13, the Township Council for the Township of West Orange formalized its support of a “Shop Local” campaign to stimulate the patronage of local businesses located in the Township;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, in the County of Essex and State of New Jersey, that there should be created a Chapter 5, Section 33, of the Revised General Ordinances of the Township of West Orange, which shall provide as follows:

5-33 LICENSING FOR “SHOP LOCAL” REWARD PROGRAMS

5-33.1 Purpose

The purpose of this Ordinance is to provide a uniform set of procedures for applications by and licensing of an Applicant seeking to operate and administer a “Shop Local” program within the Township.

5-33.2 Definitions

As referred to in this Chapter and all applicable subsections, the following terms shall have the following meanings:

“Shop Local Program” shall mean any program whereby Taxpayer Consumers make purchases at Participating Merchants and earn property tax credits to satisfy a Taxpayer Consumer’s property tax obligations to the Township, or earn credits for check rebates for purchases made at Participating Merchants.

“Applicant” shall mean the entity seeking a license to design, operate and administer a “Shop Local Program” to stimulate local commerce by providing property tax credits or other such rewards in connection with purchases by Taxpayer Consumers made at Participating Merchants, as defined herein. The term “Applicant” may also refer to a “Licensee” after a license is awarded to an Applicant pursuant to the terms of this Chapter.

“Participating Merchant(s)” shall mean business(es) with a location in the Township, or located outside the Township but not competing with any local business, which voluntarily register and enter into an agreement with Applicant to participate in the Shop Local Program.

“Taxpayer Consumer(s)” shall mean Township property owners, residents, residents of other municipalities who work in the Township, or any individual who voluntarily registers and enters into an agreement with the Applicant to participate in the Shop Local Program and qualifies for receipt of tax credits or rebates.

5-33.3 License Required

No person or entity shall operate a Shop Local Program within the Township unless the entity seeking to operate same is licensed pursuant to the terms of this Ordinance.

5-33.4 Licensing of Applicants

- a. *Application Information.* Applications for a license to operate a Shop Local Program shall be made to the Township Clerk on forms provided by the Township Clerk. The form(s) to be used for the application shall be approved by the Township Council and may set forth additional requirements, terms and conditions, other than those enumerated in this Ordinance, which the Township Council deems necessary and proper to the efficient and effective administration of the Shop Local Program.

Applications shall be verified by oath or affirmation. Applications by a corporation shall be verified by all officers and directors and all persons holding more than ten-percent (10%) of the corporation's common stock, as well as the corporation itself.

- b. *Review of License.* Upon receipt of the license application, the Township Clerk shall review the application to ensure that it has been properly completed. The Township Clerk shall thereafter submit all properly completed applications to the Township Council for determination as to whether to grant or deny the license.
- c. *Factors considered.* In determining whether to grant or deny the license to the Applicant, the Township Council shall take into consideration, among any other factors it considers relevant, the following:
1. The Applicant's ability to properly conduct the licensed activity.
 2. The moral character of the Applicant, whether a corporate entity or other such partnership. If a corporation, the Township Council shall consider the moral character of each officer, director, manager, supervisor and/or shareholder. If a partnership, the Township Council shall consider the moral character of each partner.
 3. The business responsibility of the Applicant, including but not limited to community service work or other such charitable endeavors.
 4. The criminal history of the Applicant, whether an entity or individual owner, director, manager, supervisor, officer or shareholder. A copy of the Applicant's criminal history record, obtained from the New Jersey State Police, shall be submitted with the application. If the Applicant is a corporation, a criminal history record from the New Jersey State Police shall be submitted for all officers and directors of the corporation, all shareholders owning more than ten (10) percent of common stock, and any other employee who will be an authorized signatory on any bank account where Taxpayer Consumers' monies will be deposited. If the Applicant is a partnership, a criminal history record from the New Jersey State Police shall be submitted for all partners.
 5. Prior experience in the financial industry, although a lack of prior experience shall not necessarily be a factor militating against issuance of a license.

- d. *Issuance of License.* If the Applicant's request for a license is approved by the Township Council, the Township Clerk shall issue a license to the Applicant within ten (10) business days of the approval. The contents of an Applicant's license to operate a Shop Local Program shall contain the information required pursuant to Section 1.4 of this Chapter.

5-33.5 Term of License

The first license granted to an Applicant shall be for a term of two (2) years from the date of issuance of the license by the Township Clerk (the "Initial Term"), after Township Council approval. After the expiration of the Initial Term, the license may be renewed for subsequent terms of three (3) years, provided that Applicant submits a request for renewal to the Township Clerk in accordance with Section 5-33.7, and same is approved by the Township Council. The three (3) year term shall commence from the date of issuance of the license renewal by the Township Clerk.

- .6 Application and License Fees

- a. *Application Fee.* In order to submit an application for a license pursuant to this Ordinance, the Applicant shall remit a non-refundable application fee of \$50 to the Township Clerk. This application fee shall not apply to applications for license renewals.
- b. *License Fee.* The Applicant shall remit a \$100 fee for the initial two (2) year term of its license. If the license is renewed for subsequent three (3) year term(s) in accordance with Section 5-33.5, the Applicant shall pay to the Township a \$200 non-refundable license fee.

- .7 Renewals

All license renewals shall be put to the Township Council for consideration. Failure to request a license renewal, in writing, within thirty (30) days prior to expiration of a license term shall render the Applicant's license void at the conclusion of the term.

An Applicant's license may be renewed contingent upon payment of the applicable non-refundable license fee and the filing of:

- 1. A sworn statement filed with the Township Clerk that there have been no changes in the information contained in the initial application, which shall be filed with the Township Clerk no later than thirty (30) days prior to the expiration of a term; or
- 2. In the event of any change in information submitted with the Applicant's initial application, submission of a renewal application to the Township Clerk for consideration by the Township Council no later than thirty (30) days prior to the expiration of a term.

5-33.8 Revocation and Suspension

An Applicant's license may be revoked or suspended pursuant to the terms of Section 1.9 of this Chapter. In addition to the causes for revocation or suspension specified therein, the Applicant's license may be revoked or suspended by the Council after notice and a hearing for any of the following reasons:

- a. Applicant fails to timely remit payments to the Township to satisfy obligations due to the Township from Taxpayer Consumers.
- b. Applicant does not satisfy its obligations to the Township, as set forth in the terms of this Ordinance or in the terms and conditions set forth in the license application as approved by the Township Council.
- c. The Township learns of the existence of entry of a judgment, or an unsatisfied judgment of record, entered against the licensee or Applicant in any suit arising from or in relation to the operation of any Shop Local Program;
- d. Applicant fails to comply with any and all applicable laws of the State of New Jersey, the ordinances of the Township, or the rules and regulations adopted in accordance with this Ordinance;
- e. The Township learns of the intentional misrepresentation of information on an application for a license or a request for a renewal.

5-33.9 Shop Local Program As Sole Responsibility of Applicant and Applicant's Responsibility for Informing Taxpayer Consumers

- a. *Sole Responsibility of Applicant.* The Shop Local Program shall be administered and managed solely by the Applicant. Upon licensing, it shall be the Licensee's independent responsibility to oversee the Shop Local Program, register Taxpayer Consumers, and/or contract with interested Participating Merchants. The Applicant shall not represent in any manner that it is an agent or representative of the Township.
- b. *Written descriptions of program.* It shall be the Applicant's sole responsibility to ensure that Taxpayer Consumers have access to a written description of the gross percentage of credits that will be paid to the Township towards the Taxpayer Consumer's real property taxes upon a purchase made at all Participating Merchants. Licensee shall make its best effort to ensure that all Participating Merchants post a sign in its front window or in another conspicuous location, indicating that the Participating Merchant is a "Participating Member of Shop West Orange Property Tax Reward Program." Every Participating Merchant shall be responsible for making available to Taxpayer Consumers patronizing its business a written description of the percentage of each transaction which shall be paid to the Township and/or credited to the Taxpayer Consumer.
- c. *Review of Participating Merchant's Applications To Participate In Program.* The Applicant shall coordinate, receive and review all applications by local businesses to become a Participating Merchant. In the event that the Applicant receives an application to become a Participating Merchant from a business located outside the Township, the Licensee shall review same, and any approvals shall be subject to the review and approval of the Township's Chief Financial Officer and/or Business Administrator, which approval shall not be unreasonably withheld.

Insurance and Indemnification

- a. *Proof of Insurance.* In conjunction with the submission of an Applicant's application or renewal notice to operate a Shop Local Program, an Applicant must provide proof of a valid and current general commercial liability insurance policy with a company duly licensed to transact business under the insurance laws of this State. The policy or

policies shall provide coverage for a sum of not less than \$1,000,000 against loss by reason of general commercial liability, not less than \$250,000 to satisfy any claim for damages to property negligently caused by the Applicant, and not less than \$2,000,000 in the aggregate. Applicant shall also be required to maintain in force, for the duration of the licensing period, insurance policies for workers compensation coverage for its employees, officers, agents, and/or partners, as required by applicable workers compensation laws, and shall provide a Certificate of Insurance to the Township to evidence such coverage. The Applicant must provide a current Certificate of Insurance listing the Township as an additional insured. All insurance must cover any acts of defalcation of Township funds.

- b. *Indemnification.* The Applicant shall indemnify, defend, and hold harmless the Township, its officers, agents and employees, from any and all claims, actions, liability or costs, including reasonable attorneys' fees and other costs of defense, in connection with, arising out of, or in any way related to the negligence of the Applicant, or its agents or employees, in the administration of the Shop Local Program.

5-33.10 Fiduciary Policy Requirement

- a. *Fiduciary Policy Required.* The Applicant shall provide to the Township, in lieu of a cash or other bond, proof of a valid fiduciary policy naming the Township as a loss payee in the amount of \$50,000. The amount required for the Fiduciary Policy may be amended from time to time by Resolution of the Township Council.
- b. *Amendments to Fiduciary Policy.* The Township specifically reserves the right to require changes to the fiduciary policy amount during a license term, based upon the volume and amounts of sales transactions. The type of guarantee may be substituted with another form of security acceptable to the Township, at the discretion of the Township Council.

5-33.11 Timing and Reporting

- a. *Weekly Deposits Required.* A Licensee under this Chapter must maintain a dedicated bank account for funds received in connection with the Shop Local Program, unless the Taxpayer Consumer's property tax credit funds will be immediately directed to and held in the Township's own FDIC insured dedicated bank account, in which case the Administrator need not establish such a bank account. A Licensee shall hold in trust and every week shall turn over all funds collected from the Shop Local Program on behalf of Taxpayer Consumers, via electronic transfer, to the Township's dedicated bank account. The cost of the wire transfer, if any, shall be the responsibility of the Township rather than the Applicant.
- b. *Quarterly Reporting Required.* Along with the weekly deposits required under this subsection, at the expiration of each calendar quarter, a Licensee shall provide a report to the Township's Chief Financial Officer, which must be certified and provide the following information: (i) name of Taxpayer Consumer; (ii) amount of funds collected; and (iii) the address and/or Block and Lot number of the Township property which should be credited, if any.
- c. *Payments to tenants and non-residents.* It will be the Licensee's sole responsibility to hold in trust and remit any and all monies to be paid as rebates to Taxpayer Consumers who do not pay property taxes to the Township, including but not limited to tenants,

renters, non-resident employees, visitors, or other such individuals authorized to participate and register in the Shop Local Program.

- d. *Reports to Taxpayer Consumers.* The Licensee shall make available to all Taxpayer Consumers a written statement of credits or rebates earned by the Taxpayer Consumer. The Licensee may provide this statement via e-mail, or make same accessible via its Web site.

5-33.12 Property Tax Credits Provided Only Upon Receipt of Funds by the Township

The Township will only provide credits to a Taxpayer Consumer's property tax bill after payment is received from a Licensee with respect to the specific property tax account. If the Township does not receive payment relating to a property tax credit, whether or not such rebates were collected by the Licensee, the Taxpayer Consumer will be responsible for the full amount of the property tax liability as if the credits were never provided by the Participating Merchant.

5-33.13 Violations and Penalties

In addition to suspension and/or revocation of any license issued hereunder, and in addition to any applicable State penalties, any violation of the provisions of this Ordinance, or any violation of the terms and conditions of the Applicant's application, shall be punishable as provided in Chapter I, Section 1-5 of the Revised General Ordinances of the Township of West Orange.

5-33.14 Additional Conditions.

The Township shall establish the necessary reporting requirement for any payment of taxes made to the Township by the vendor. The Township shall not be responsible for any impact of program participation on mortgage escrow calculations. The Township shall not be responsible for any changes in property ownership.

The Applicant shall have the right to surrender its license to the Township at any time, so long as it provides ninety (90) days' notice to the Township Clerk and Business Administrator, in writing. In such an event, the Applicant agrees to the orderly phasing out of its involvement in the Shop Local Program, including but not limited to remitting the balance of any and all funds due to the Township in connection with property tax credits which may have been retained by the Applicant on behalf of Taxpayer Consumers.

AND BE IT FURTHER ORDAINED, that the remainder of Chapter 5 remains unchanged.

BE IT FURTHER ORDAINED, that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with law.

Honorable Susan McCartney
Council President

Honorable Robert D. Parisi
Mayor

Adopted: August _____, 2013

Approved as to form on the basis of the facts provided:

Richard D. Trenk
Township Attorney

740139_1

LEGISLATIVE HISTORY

This Ordinance is intended to provide a legislative scheme which requires that any entity seeking to operate any type of “Shop Local” incentive program must first obtain a license to do so.

On May 7, 2013, the Township Council adopted Resolution No. 87-13, formally expressing its support for a “Shop Local” property tax credit program (the “Shop Local Program”). The Shop Local Program proposes to authorize licensed third party administrators (“TPA”) to organize and administer a local economic stimulation plan whereby a Township resident is rewarded with property tax credits when it makes purchases at Participating Merchants.

As currently contemplated, the Shop Local Program will require TPAs to register and contract with certain interested merchants, which would offer tax credits, processed through the TPA, to residents who make purchases at their businesses. The TPA will receive a fee from the Participating Merchant for a designated portion of the transaction (in an exact percentage selected by the Participating Merchant), and a portion of that fee would then be provided to the Township to satisfy the resident’s financial or tax obligations to the Township.

Other municipalities have adopted or are in the process of adopting and authorizing such programs. These municipalities include Marlboro, Pequannock, Voorhees, Bayonne, Caldwell and Manalapan. The New Jersey Department of Consumer Affairs, Division of Local Government Services, has advised the Township that there is no prohibition on this manner of satisfying a resident’s tax obligations.

This proposed Ordinance serves several important functions. First, it creates a clear procedure to govern the application process for those entities seeking to operate any ShopLocal Program. Once a conforming application has been submitted to the Township Clerk and reviewed for completeness, the Township Council has the authority to grant or deny the license by resolution based on its review of several enumerated factors.

This legislation also promotes the public safety and welfare, requiring that all applicants for a license to operate a Shop Local Program meet a review by the Township Council about the applicant's business aptitude and criminal history. This Ordinance also protects the public by requiring the licensee to post a bond, essentially guaranteeing that monies credited to a Taxpayer Consumer for making purchases at local businesses actually be made available to the Township as a credit to the Taxpayer Consumer. The Ordinance also requires the applicant to file proof of liability insurance which names the Township as an Additional Insured, and further requires an indemnification in favor of the Township to ensure that there is limited liability in connection with the Shop Local Program. Also, given the innovative nature of the Shop Local Program, this legislation authorizes the Township Council to establish, by resolution, a form of application to be submitted by the prospective licensee; this application form may also set forth additional terms and conditions which the Council deems necessary and proper to the efficient and effective administration of the Shop Local Program.

The Authority for this proposed Ordinance is derived from N.J.S.A. 40:48-1, which authorizes the governing body of every municipality in the State of New Jersey to "make, amend, repeal and enforce . . . ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants."