

BOROUGH OF EATONTOWN – NOTICE OF ORDINANCE ADOPTION

NOTICE is hereby given that **Ordinance 09-2023** - Ordinance of the Borough of Eatontown Entitled **“An Ordinance of The Borough of Eatontown Amending Chapter 200 “Licenses and Permits”, Creating Article IV, “Shop Local Reward Programs” Sections 200-14.1 to 200-14.14”** was passed after a public hearing at the regular meeting of March 8, 2023 by the Governing Body of the Borough of Eatontown, at 47 Broad Street, Eatontown, NJ 07724. Borough of Eatontown - Julie Martin, RMC, Borough Clerk

ORDINANCE 09-2023

BOROUGH OF EATONTOWN

COUNTY OF MONMOUTH, STATE OF NEW JERSEY

AN ORDINANCE AMENDING CHAPTER 200 “LICENSES AND PERMITS”, CREATING ARTICLE IV, “SHOP LOCAL REWARD PROGRAMS” SECTIONS 200-14.1 TO 200-14.14

WHEREAS, the Borough Council of the Borough of Eatontown desires to stimulate local commerce in the Borough by encouraging the patronage of Eatontown-based businesses by local residents; and

WHEREAS, the Borough Council has determined it is appropriate to permit "reward" type programs that act as enhancement which will give Eatontown taxpayers a financial incentive to patronize participating Borough-based businesses through the payment of residential property taxes; and

WHEREAS, the Borough Council of the Borough of Eatontown believes that the implementation of this system will benefit Eatontown-based businesses and resident taxpayers.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Eatontown, in the County of Monmouth and State of New Jersey, that it hereby amends Chapter 200 “Licenses and Permits” to create Article IV “Shop Local Reward Programs” which shall provide as follows:

200-14 LICENSING FOR “SHOP LOCAL” REWARD PROGRAMS

200-14.1 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 Borough.

200-14.2 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 the Borough

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 Borough, or located outside the Borough but not competing with any local business (“Destination Businesses”), which voluntarily register and enter into an agreement with Applicant to participate in the Shop Local Program.

“Taxpayer Consumer(s)” shall mean Borough property owners, residents, residents of other municipalities who work in Eatontown, or any other such individual, who voluntarily registers and enters into an agreement with the Applicant to participate in the Shop Local Program.

200-14.3 License Required

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

200-14.4 Licensing of Applicants

- a. *Application Information.* Applications for a license to operate a Shop Local Program shall be made to the Borough Clerk on forms provided by the Borough Clerk. The form(s) to be used for the application shall be approved by the Borough Council and may set forth additional requirements, terms and conditions, other than those enumerated in this Ordinance, which the Borough 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 Borough Clerk shall review the application to ensure that it has been properly completed. The Borough Clerk shall thereafter submit all properly completed applications to the Borough 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 Borough 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 Borough Council shall consider the moral character of each officer, director, manager, supervisor and/or shareholder. If a partnership, the Borough 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 Borough Council, the Borough 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 this Chapter.

200-14.5 Term of License

The first license granted to an Applicant shall be for a term of one (1) year from the date of issuance of the license by the Borough Clerk after Borough Council approval. After the expiration of the first year, the license shall be automatically renewed for a term of three (3) years from the date of issuance of the license by the Borough Clerk, provided the Applicant's license has not been revoked or suspended. If the Applicant's license has been revoked or suspended, all requests for renewals must be presented to the Borough Council.

200-14.6 Renewals

All license renewals shall be put to the Borough 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 Borough Clerk that there have been no changes in the information contained in the initial application, which shall be filed with the Borough 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 new application to the Borough Clerk for consideration by the Borough Council no later than thirty (30) days prior to the expiration of a term.

200-14.7 Revocation and Suspension

An Applicant's license may be revoked or suspended pursuant to the terms 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 Borough to satisfy obligations due to the Borough from Taxpayer Consumers.
- b. Applicant does not satisfy its obligations to the Borough, 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 Borough Council.
- c. The Borough 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 Borough, or the rules and regulations adopted in accordance with this Ordinance;
- e. The Borough learns of the intentional misrepresentation of information on an application for a license or a request for a renewal.

200-14.8 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 Borough.

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 Borough 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,

200-14.9 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 Borough to evidence such coverage. The Applicant must provide a current Certificate of Insurance listing the Borough as an additional insured. All insurance must cover any acts of defalcation of Borough funds.
- b. *Indemnification.* The Applicant shall indemnify, defend, and hold harmless the Borough, 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.

200-14.10 Bonding Requirement

- a. *Bond requirement.* The Applicant shall provide to the Borough, in lieu of a cash or other bond, proof of a valid fiduciary policy naming the Borough as a loss payee in the amount of \$50,000, which amount may be amended from time to time by Resolution of the Borough Council.
- b. *Bond requirement amendments.* The Borough 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 Borough, at the discretion of the Borough Council.

200-14.11 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 Borough'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 Borough's dedicated bank account. The cost of the wire transfer, if any, shall be the responsibility of 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 Borough'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 Borough 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 Borough, 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.

200-14.12 Property Tax Credits Given Only Upon Receipt of Funds by the Borough

The Borough 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 Borough 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.

200-14.13 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 up to a \$2000 penalty per violation per day and up to 90 days in jail.

200-14.14 Additional Conditions.

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

The Applicant shall have the right to surrender its license to the Borough at any time, so long as it provides ninety (90) days' notice to the Borough 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 Borough in connection with property tax credits which may have been retained by the Applicant on behalf of Taxpayer Consumers.

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.

DATE INTRODUCED: February 22, 2023

DATE ADOPTED: March 8, 2023