

ORDINANCE 2003-06

LICENSING AND REGULATIONS OF PURCHASES OF SECONDHAND PERSONAL PROPERTY AND PAWNING

- (a) *Purpose.* The purpose of this section is to promote the safety and welfare of the citizens of the town, by prescribing procedures which will assist in the reduction of burglaries and thefts by curtailing the disposition of certain stolen property and which will assist in identifying that stolen property so that it may be returned to its owners.
- (b) *Definitions.* For the purposes of this section, the following words and phrases have the following meanings:

Chief of Police: The Chief of Police, Berkeley Springs Police Department of the Town of Bath, West Virginia.

Town Mayor: The town administrator of the Town of Bath, West Virginia.

Town Council: The town council of the Town of Bath, West Virginia.

Purchaser: Any person, individual, corporation, business trust, partnership association, or two or more persons having a joint or common business interest or any other legal or commercial entity engaged in the business of receiving, obtaining, purchasing, receiving as a pawnbroker, or selling secondhand property in Bath, West Virginia, or having his, her, or its place of business for receiving, purchasing, obtaining, receiving as a pawnbroker, or selling secondhand personal property located in Bath, West Virginia, whether that person is acting in his own behalf or as an agent, servant, or employee of another.

Secondhand personal property: Any of the following, subject to the exceptions (exemptions) set forth below, if previously owned by a consumer or collector, or not obtained or purchased from a merchant in the usual and ordinary course of business:

- (1) Any of the following metals, any coins made principally of such metals, and any personal property made in whole or in part of gold, silver, platinum, iridium, palladium, ruthenium, rhodium, osmium in pure or alloyed form, including silverware and silver-plated items;
- (2) Jewelry, precious and semi-precious stones;
- (3) Binoculars, watches and cameras
- (4) Television sets, radio and stereo equipment;
- (5) Musical instruments;
- (6) Typewriters, check writing machines, adding machines, and office equipment;
- (7) Coins or coin collections, or money when not used as the medium for payment;

(8) Any and all personal property

(9) Guns, firearms

Exemptions from the definition of secondhand personal property. Secondhand personal property, as defined and implemented in this section, shall not include the following:

1. Personal property which is subject to and has been issued a title under the provisions of the laws of the State of West Virginia or any other State;
2. Personal property purchased from or sold to a retail or wholesale dealer of such personal property in the ordinary course of business.
3. Personal property sold at a "yard sale".
4. Personal property purchased or sold by nonprofit or charitable corporations, service clubs, and organizations.
5. Items belonging to, made in, or typical of an earlier period. An object having special value because of its age; namely antiques. Secondhand dealer exemptions are to include antique dealers.
6. Items given over to the care of another; entrust, for resale with the intent of profiting from a share of the sale, namely consignment. Consignment shops are exempt.

Transaction: To carry on or to conduct business or a business deal, including the buying, selling, or trading of secondhand personal property.

License required:

It shall be unlawful for any person to engage in the barter, trade or purchase of any secondhand personal property unless such person has obtained a license from the Town of Bath.

A statement that the applicant authorizes any police officer to inspect the records of purchases and sales, of the business during regular business hours, provided the police officer states what items of personal property he is looking for.

A purchaser of secondhand personal property shall conduct said business only from the fixed permanent location as specified in the application for the license, which fixed permanent location shall be other than a motel or hotel room generally used by transients, and other than a motor vehicle, mobile home, or trailer, unless said vehicle or trailer is permanently affixed to the real estate.

License denial, suspension or revocation. Upon receipt of any application the clerk shall forward it to the chief of police or his designee who shall conduct an investigation of the background of the applicant. The council may refuse to grant a license to any applicant, or may suspend, revoke or refuse to renew the license

of any licensed purchaser if the police investigation reveals that any of the following has occurred:

1. The applicant or purchaser has violated any provisions of this subtitle;
2. A similar license issued to the applicant or licensed purchaser has been suspended or revoked, or has been refused, in another jurisdiction;
3. The applicant or licensed purchaser has been convicted of a felony or theft offense within the five years immediately prior to the submission of any application or request for renewal of a license in the city

Appeal:

1. Before revoking, suspending or refusing to grant or renew any license, the council shall afford the applicant or purchaser of secondhand personal property an opportunity to show cause why his license should not be refused, revoked or suspended at an informal conference to be held by the Mayor if so requested by the applicant or purchaser within 15 days of receipt of written notice of the council's proposed action.

Required Records and Reports:

1. A purchaser shall record each purchase involving secondhand personal property and the following information shall be required:
 - a. The name of the person selling and/or delivering secondhand personal property to the purchaser.
 - b. The date of the purchase.
 - c. The valid driver's license number or age-of-majority identification number from any credit card or identification card (including the name of the type of card from which the identification number is taken) of the person or persons selling the secondhand personal property, or a legible thumbprint;
 - d. The name of the person making the record entry;
 - e. A description of the item purchased by the licensed purchaser, including but not limited to, a description of the metallic composition, any jewels, stones, or glass, and a listing of all numbers, marks, monograms, trademarks, manufacturers' names, serial numbers, and any other marks of identification appearing on the items;
 - f. Evidence of obliteration, defacing, removal, alteration, or covering of any numbers, marks, monograms, trademarks, manufacturers' names, serial numbers, or any other marks of identification on the item;
 - g. The consideration paid for the item.

- h. The purchaser shall report all the information required by this section in writing to the Chief of Police, Berkeley Springs Police Department, Town of Bath, within 96 hours of the purchase.
- i. The information required by this section shall be preserved as a record for a period of not less than three years
- j. All items sold are required to be documented by a receipt with name and address of buyer.

Disposition of stolen property: If any law enforcement officer has probable cause or a reasonable belief that secondhand personal property located in a purchasers premises is "stolen property" the purchaser shall release said property to the officer upon demand and upon receiving a receipt for the property from the officer.

Retention of secondhand personal property:

1. A purchaser may not melt, change, take apart, destroy, barter, trade, transfer or sell, any secondhand personal property items or obliterate identification marks, or dispose of any secondhand personal property purchased or otherwise obtained by a purchases until ten calendar days have elapsed from the date of purchase of the secondhand personal property.
2. All secondhand personal property obtained by a purchaser shall be stored at the business location in the town where it was purchased, until ten calendar days have elapsed from the date of purchase of the item of secondhand personal property.

Minors: A purchaser shall not purchase or obtain any secondhand personal property from any person under 18 years of age, unless the person is accompanied by a parent or legal guardian. The purchaser or purchaser's employee shall obtain from the parent or guardian of the minor and from the minor all of the information required by subsection.

Right of Inspection: Any law enforcement officers are hereby authorized to inspect the records of purchases and sales of any purchaser at any time when such purchasers are open for the transaction of business provided the law enforcement officer first states to the purchaser what items of personal property he is looking for

Penalties:

1. Any purchaser violating any provisions of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed \$300.00. Each day that a violation continues shall be a separate offense.
2. Any purchaser convicted of a violation of this section, or any purchaser who pleads guilty to a violation of this section, shall be subject to having his/her, or its license to do business within the town revoked.

First Reading _____

Second Reading 10-6-03

PASSED This 6 Day of Oct. 2003

Susan J. Webster
Susan J. Webster, Mayor

ATTEST: David M. Hall
Dave Hall, Recorder