

12-31-09 Draft

Otter Tail County Pawnbroker Ordinance

I. General Provisions.

- A. This Ordinance from the date of its passage shall be known as the Otter Tail County Pawnbroker Ordinance.
- B. Purpose. The County Board finds that the use of services provided by pawnbrokers provides an opportunity for the commission of crimes and their concealment because pawn businesses have the ability to receive and transfer property stolen by others easily and quickly. The County Board also finds that consumer protection regulation is warranted in transactions involving pawnbrokers. The County Board also finds that consumer protection regulation is warranted in transactions involving pawnbrokers. The County Board further finds that the pawnbroker industry has outgrown the County's current ability to effectively and efficiently identify criminal activity related to pawn shops. The purpose of this Ordinance is to prevent pawn businesses from being used as facilities for the commission of crimes and to insure that such businesses comply with base consumer protection standards, thereby protecting the public health, safety and general welfare of the citizens of the county.

To help the Sheriff better regulate current and future pawn businesses, decrease and stabilize costs associated with the regulation of the pawn industry and increase identification of criminal activities in the pawn industry through the timely collection and sharing of pawn transaction information, this Ordinance also implements and establishes the required use of an electronic pawn tracking system.

- C. Legal Authority. This Ordinance is enacted pursuant to Minnesota Statutes Chapter 325J, and Sections 471.924 through 471.929.
- D. Savings Clause. This Ordinance shall be read so as to contain the minimum provisions of Minnesota Statutes Chapter 325J, as it may from time to time be amended, and any such provisions not contained herein shall be considered adopted by reference so as to conform with the authority granted by the Chapter for local ordinances. In the event any provision of this Ordinance shall be found contrary to law by a court of competent jurisdiction from whose final judgment no appeal has been taken, such provision shall be considered void. All other provisions of this Ordinance shall continue in full force and effect as though the voided provision had never existed.

E. Definitions.

1. Scope. As used in this chapter, the following terms have the meanings given them unless the context clearly indicates otherwise.
2. Appropriate law enforcement agency. "Appropriate law enforcement agency" means the attorney general of the state of Minnesota, the sheriff of each county in which a pawnbroker maintains an office, or the police chief of the municipality or law enforcement officers of the municipality in which a pawnbroker maintains an office.
3. Municipality. "Municipality" means any town, home rule charter or statutory city, or county that elects to regulate and license pawnbrokers within its jurisdiction pursuant to local ordinance.
4. Pawnbroker.
 - a. Except as provided in paragraph b., "pawnbroker" means a person engaged in whole or in part in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
 - b. The following are exempt from the definition of "pawnbroker": any bank regulated by the state of Minnesota, the comptroller of the currency of the United States, the Federal Deposit Insurance Corporation, the board of governors of the Federal Reserve System, or any other federal or state authority and their affiliates; any bank or savings association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or any successor to it and all affiliates of those banks and savings associations; any state or federally chartered credit union; and any industrial loan and thrift company or regulated lender subject to licensing and regulation by the Department of Commerce.
5. Pawnshop. "Pawnshop" means the location at which or premises in which a pawnbroker regularly conducts business.

6. Pawn transaction. "Pawn transaction" means any loan on the security of pledged goods or any purchase of pledged goods on the condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.
 7. Person. "Person" means an individual, partnership, corporation, limited liability company, joint venture, trust, association, or any other legal entity, however organized.
 8. Pledged goods. "Pledged goods" means tangible personal property other than choses in action, securities, bank drafts, or printed evidence of indebtedness, that are purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction.
- F. Transition. Pawnbrokers that are in business when a municipality adopts an ordinance under this chapter must apply for a license and pay the required fee within 90 days of adoption of the ordinance.

II. License Required.

A. Licensing and Regulation.

1. A person may not engage in business as a pawnbroker or otherwise portray the person as a pawnbroker unless the person has a valid license authorizing engagement in the business. Any pawn transaction made without benefit of a license is void.
2. A separate license is required for each place of business. The County may issue more than one license to a person if that person complies with this chapter for each license.
3. Each license shall remain in full force and effect until surrendered, suspended, revoked, or expired. A license may be suspended or revoked for failure to comply with this Ordinance.
4. No expiration, revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any pledgor.
5. The appropriate local law enforcement agency shall be notified by the municipality of any licensee whose license has expired or been surrendered, suspended, or revoked as provided by this chapter.

B. Licensee Eligibility.

1. To be eligible for or to maintain a pawnbroker license, a person must operate lawfully and fairly within the purposes of this Ordinance and Minnesota Statutes Chapter 325J and:
 - a. may not be a minor at the time that the application for a pawnbroker's license is filed;
 - b. may not have been convicted of any crime directly related to the occupation licensed as prescribed by section 364.03, subdivision 2, unless the person has shown competent evidence of sufficient rehabilitation and present fitness to perform the duties of a licensee under this chapter as prescribed by section 364.03, subdivision 3; and
 - c. must be of good moral character or repute.
2. Any change, directly or beneficially, in the ownership of any licensed pawnshop shall require the application for a new license and the new owner must satisfy all current eligibility requirements.

C. Pawnshop Location. No pawnshop shall be located within ten driving miles of any gambling casino.

D. License Application. An application form provided by the County Auditor must be completed by every applicant for a new license or for renewal of an existing license. Every new applicant must provide the following information:

1. If the applicant is a natural person:
 - a. The name, place and date of birth, street resident address, and phone number of applicant.
 - b. Whether the applicant is a citizen of the United States or resident alien.
 - c. Whether the applicant has ever used or has been known by a name other than the applicant's name, and if so, the name or names used and information concerning dates and places used.
 - d. The name of the business if it is to be conducted under a designation, name or style other than the name of the applicant and a certified copy of the certificate as required by Minnesota Statutes, Section 333.01.
 - e. The street address at which the applicant has lived during the preceding five (5) years.

- f. The type, name and location of every business or occupation in which the applicant has been engaged during the preceding five (5) years and the name(s) and address(es) of the applicant's employer(s) and partner(s), if any, for the preceding five (5) years.
 - g. Whether the applicant has ever been convicted of a felony, crime or violation of any ordinance other than a traffic ordinance. If so, the applicant must furnish information as to the time, place and offense of all such convictions.
 - h. If the applicant does not manage the business, the name of the manager(s) or other person(s) in charge of the business and all information concerning each of them required in this section.
2. If the applicant is a partnership:
 - a. The name(s) and address(es) of all general and limited partners and all information concerning each general partner required in subdivision 1. of this section.
 - b. The name(s) of the managing partner(s) and the interest of each partner in the licensed business.
 - c. A true copy of the partnership agreement shall be submitted with the application. If the partnership is required to file a certificate as to a trade name pursuant to Minnesota Statute, Section 333.01, a certified copy of such certificate must be attached to this application.
3. If the applicant is a corporation:
 - a. The name of the corporation or business form, and if incorporated, the state of the corporation.
 - b. A true copy of the Certificate of Incorporation, Articles of Incorporation or Association Agreement, and By-Laws shall be attached to the application. If the applicant is a foreign corporation, a Certificate of Authority as required by Minnesota Statutes, Section 303.06, must be attached.
4. Fees. At the time of making the application, the applicant shall pay an annual application fee as set by the County Board.
5. Duration of Application. The application shall be valid for one year.
6. Application Execution. All applications for a license under this chapter must be and sworn to under oath or affirmation by the applicant. If the application is that of a natural person, it must be

signed and sworn to by such persons; if that of a corporation, by an officer thereof; if that of a partnership, by the manager or managing officer thereof. Any falsification on a license application shall result in the denial of a license.

7. License Issuance.

- a. No license shall be issued until the Otter Tail County Sheriff's Department has conducted an investigation of the representations set forth in the application, and the applicant's moral character and the applicant's financial status. All applicants must cooperate fully with this investigation.
- b. No license shall be issued until the County Board has held a public hearing in the manner as the County Board may direct. At the public hearing, all persons interested in the matter shall be heard, and the hearing may be adjourned from time to time. No hearing shall be required for a renewal of a license, but the County Board may, in its sole discretion, hold a public hearing.
- c. After investigation and hearing, the County Board shall, in its discretion, grant or deny the application.
- d. Each license shall be issued only to the applicant for the premises described in the application. No license may be transferred to another person or place without application to the County Board in the same manner as an application for a new license. Transfer of 25 percent or more of the stock of a corporation or a controlling interest thereof, whichever is less, shall be deemed a transfer of the license of a corporate license. If the licensee is a corporation, which is wholly owned by another corporation, the same provisions about the transfer of stock or controlling interest shall apply to that parent corporation, any second parent corporation, which wholly owns the parent corporation, and all other similarly situated parent corporations up through the chain of ownership. Transfer of this amount of stock without prior County Board approval is grounds for revocation or suspension of the license. In addition, each day the licensee operates under the license after a transfer has taken place without first obtaining a County Board approval shall be a separate violation under this chapter.
- e. Any application for a license may be considered by the County Board at the same time an applicant is requesting any land use approvals needed for the site, including site plan review or rezoning. Final approval of a license shall not be granted until the County Board has given at least

preliminary approval to any necessary land use requested. If an application is granted for location where a building is under construction or not ready for occupancy, the license shall not be delivered to the licensee until a Certificate of Occupancy is issued for the licensed premises.

f. In the case of the death of the licensee, the personal representative of a licensee may continue operation of the business for not more than 180 days after the licensee's death.

8. License Suspension and Revocation. Any license under this chapter may be denied, suspended or revoked for one or more of the following reasons:

a. Delinquent Taxes: The County Board may suspend or revoke a license issued under this chapter for operation on any premises on which real estate taxes, assessments or other financial claims of the County or of the state are due, delinquent or unpaid. If an action has been commenced pursuant to the provisions of Minn. Statute Chapter 278, as it may be amended from time to time, questioning the amount of validity of taxes, the County Board may, on application by the licensee, waive strict compliance with the provision; no waiver may be granted, however, for taxes, or any portion thereof, which remain unpaid for a period exceeding one year after becoming due unless the one-year period is extended through no fault of the licensee.

b. Violations: The County Board may either suspend for up to 60 days or revoke any license or impose a civil fine not to exceed \$2,000 for each violation upon a finding that the licensee or an agent/employee of the licensee has failed to comply with any applicable statute, regulation or ordinance provision. No suspension or revocation shall take effect until the licensee has been afforded an opportunity for hearing pursuant to Minn. Statute 14.57-14.69, as it may be amended from time to time. Any conviction by the licensee for theft, burglary, robbery, receiving stolen property or any other crime or violation involving stolen property shall result in the immediate suspension pending a hearing on revocation of any license issued hereunder.

c. The proposed use does not comply with the applicable zoning code.

d. The proposed use does not comply with any health, building, building maintenance or other provisions of the Ordinance or state law.

- e. The applicant or license has failed to comply with one or more provisions of this chapter.
 - f. The applicant is not a citizen of the United States or a resident alien, or upon whom it is impractical or impossible to conduct a background or financial investigation due to the unavailability of information.
 - g. Fraud, misrepresentation or bribery in securing or renewing a license.
 - h. Fraud, misrepresentation or false statements made in the application and investigation for, or in the course of, the applicant's business.
 - i. Violation within the preceding five (5) years, or any law relating to the theft, damage or trespass of property, sale of controlled substances, or operation of a business.
 - j. The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this chapter.
9. License Responsibility; Conduct. Every licensee is responsible for the conduct of his/her place of business and the conditions of order in it. The act of any employee of the licensed premises is deemed the act of the licensee as well and the licensee shall be liable for all penalties provided by this chapter equally with the employee, except criminal penalties.
10. License Display Required. Every license must be posted in a conspicuous place in the premises for which it is used.

III. Pawnshop Operations.

A. Pawn Tickets.

- 1. Entries of pawn tickets. At the time of making the pawn or purchase transaction, the pawnbroker shall immediately and legibly record in English the following information by using ink or other indelible medium on forms or in a computerized record approved by the municipality:
 - a. a complete and accurate description of the property, including model and serial number if indicated on the property;
 - b. the full name, residence address, residence telephone number, and date of birth of the pledgor or seller;
 - c. date and time of pawn or purchase transaction;
 - d. the identification number and state of issue from one of the following forms of identification of the seller or pledgor: current valid Minnesota driver's license; current valid

- Minnesota identification card; or current valid photo identification card issued by another state or a province of Canada;
- e. description of the pledgor including approximate height, sex, and race;
 - f. amount advanced or paid;
 - g. the maturity date of the pawn transaction and the amount due; and
 - h. the monthly and annual interest rates, including all pawn fees and charges.
2. Printed pawn ticket. The following shall be printed on all pawn tickets:
- a. the statement that "Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of not less than 60 days past the date of the pawn transaction, renewal, or extension; no further notice is necessary. There is no obligation for the pledgor to redeem pledged goods.";
 - b. the statement that "The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item.";
 - c. the statement that "This item is redeemable only by the pledgor to whom the receipt was issued, or any person identified in a written and notarized authorization to redeem the property identified in the receipt, or a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor. Written authorization for release of property to persons other than the original pledgor must be maintained along with the original transaction record."; and
 - d. a blank line for the pledgor's signature.
3. The licensee must also take a color photograph or color video recording of each customer involved in a billable transaction.

If a photograph is taken, it must be at least two (2) inches in length by two (2) inches in width and must be maintained in such a manner that the photograph can be readily matched and correlated with all other records of the transaction to which it relates. Such photographs must be available to the Sheriff or his designee upon request. The major portion of the photograph must include an identifiable front facial close-up of the person who pawned or sold the item. Items photographed must be accurately depicted. The

licensee must inform the person that he or she is being photographed by displaying a sign of sufficient size in a conspicuous place in the premises. Items photographed by video must be accurately depicted. Video photographs must be electronically referenced by time and date so they can be readily matched and correlated with all other records of the transaction to which they relate. The licensee must inform the person that he or she is being videotaped orally and by displaying a sign of sufficient size in a conspicuous place on the premises. The licensee must keep the exposed videotape for three (3) months and surrendering it to the police department upon request.

B. Records Retention.

1. The pledgor or seller shall sign a pawn ticket and receive an exact copy of the pawn ticket.
2. The pawnbroker shall maintain on the premises a record of all transactions of pledged or purchased goods for a period of three years. These records shall be a correct copy of the entries made of the pawn transactions. A pawnbroker shall upon request provide to the appropriate law enforcement agency a complete and accurate record of pawn transactions.

C. Electronic Pawn Tracking System. The pawnbroker must use the computerized electronic pawn tracking system designated by the Otter Tail County Sheriff. All information required by the system shall be provided daily.

D. Effect of Non-Redemption .

1. A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within at least 60 days of the date of the pawn transaction, renewal, or extension shall automatically be forfeited to the pawnbroker, and qualified right, title, and interest in and to the goods shall automatically vest in the pawnbroker.
2. The pawnbroker's right, title, and interest in the pledged goods under paragraph 1. is qualified only by the pledgor's right, while the pledged goods remain in possession of the pawnbroker and not sold to a third party, to redeem the goods by paying the loan plus fees and/or interest accrued up to the date of redemption.
3. A pawn transaction that involves holding only the title to property is subject to Minnesota Statutes, Chapter 168A or 336.

E. Permitted Charges.

1. Notwithstanding any other statute, ordinance, rule, regulation, or Minnesota Statute section 325J.13, a pawnbroker may contract for and receive a pawnshop charge not to exceed three percent per month of the principal amount advanced in the pawn transaction plus a reasonable fee for storage and services. A fee for storage and services may not exceed \$20 if the property is not in the possession of the pawnbroker.
2. The pawnshop charge allowed under paragraph 1. ~~(a)~~ shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month. However, if full payment is made more than two weeks before the next succeeding date, the pawnbroker shall remit one-half of the pawnshop charge for that month to the pledgor.
3. Interest shall not be deducted in advance, nor shall any loan be divided or split so as to yield greater interest or fees than would be permitted upon a single, consolidated loan or for otherwise evading any provisions of this section.
4. Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amount permitted under this section, shall be uncollectible and the pawn transaction shall be void.
5. A schedule of charges permitted by this section shall be posted on the pawnshop premises in a place clearly visible to the general public.

F. Records; Prohibitions.

A pawnbroker and any clerk, agent, or employee of a pawnbroker shall not:

1. make any false entry in the records of pawn transactions;
2. falsify, obliterate, destroy, or remove from the place of business the records, books, or accounts relating to the licensee's pawn transactions;
3. refuse to allow the appropriate law enforcement agency, the attorney general, or any other duly authorized state or federal law enforcement officer to inspect the pawn records or any pawn goods

in the person's possession during the ordinary hours of business or other times acceptable to both parties;

4. fail to maintain a record of each pawn transaction for three years;
5. accept a pledge or purchase property from a person under the age of 18 years;
6. make any agreement requiring the personal liability of a pledgor or seller, or waiving any provision of this section, or providing for a maturity date less than one month after the date of the pawn transaction;
7. fail to return pledged goods to a pledgor or seller, or provide compensation as set forth in section 325J.09, upon payment of the full amount due the pawnbroker unless either the date of redemption is more than 60 days past the date of the pawn transaction, renewal, or extension and the pawnbroker has sold the pledged goods pursuant to section 325J.06, or the pledged goods have been taken into custody by a court or a law enforcement officer or agency;
8. sell or lease, or agree to sell or lease, pledged or purchased goods back to the pledgor or seller in the same, or a related, transaction;
9. sell or otherwise charge for insurance in connection with a pawn transaction; or
10. remove pledged goods from the pawnshop premises or other storage place approved by a municipality at any time before unredeemed, pledged goods are sold pursuant to section 325J.06.

G. Redemption; Risk of Loss.

Any person to whom the receipt for pledged goods was issued, or any person identified in a written and notarized authorization to redeem the pledged goods identified in the receipt, or any person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor shall be entitled to redeem or repurchase the pledged goods described on the ticket. In the event the goods are lost or damaged while in possession of the pawnbroker, the pawnbroker shall compensate the pledgor, in cash or replacement goods acceptable to the pledgor, for the fair market value of the lost or damaged goods. Proof of compensation shall be a defense to any prosecution or civil action.

H. Motor Vehicle Title Pawn Transactions; Special Provisions.

1. In addition to the other requirements of this chapter, a pawnbroker who holds a title to a motor vehicle as part of a pawn transaction shall:
 - a. be licensed as a used motor vehicle dealer under section 168.27, and post such license on the pawnshop premises;
 - b. verify that there are no liens or encumbrances against the motor vehicle with the Department of Public Safety; and
 - c. verify that the pledgor has automobile insurance on the motor vehicle as required by law.
2. A pawnbroker may not sell a motor vehicle covered by a pawn transaction until 90 days after recovery of the motor vehicle.

I. Police Restrictions on Sale or Redemption.

1. Investigative Hold.

Whenever a law enforcement official from any agency, acting in the course and scope of his or her duties, notifies a licensee not to sell or permit to be redeemed an article of property in the licensee's possession, the article may not be sold, redeemed or removed from the premises by the licensee. The Investigative Hold shall be confirmed in writing by the originating agency within seventy-two (72) hours and will remain in effect for fifteen (15) days from the date of notification, or until the hold is canceled, or until a Police Hold is issued pursuant to paragraph 2, or until the article is confiscated, whichever comes first.

2. Police Hold.

Whenever the Sheriff notifies a licensee not to sell or permit to be redeemed an article of property in the licensee's possession, the article may not be sold, redeemed or removed from the premises by the licensee. The Police Hold shall be confirmed in writing within seventy-two (72) hours and will remain in effect for ninety (90) days from the date of notification unless the Sheriff determines the hold is still necessary and notifies the licensee in writing. When a Police Hold is no longer needed the Sheriff shall so notify the licensee.

3. Confiscation.

If an article of property in the licensee's possession is determined to be stolen, it may be confiscated and seized as evidence by any police officer. A request for restitution from any person charged in regards to the stolen property confiscated shall be made on behalf of the licensee. When an article of property is confiscated, the person doing so shall provide identification upon request of the licensee, and shall complete a confiscation report providing at a minimum the name and telephone number of the confiscating agency and investigator, and the case number of the police report related to the confiscation. The confiscation report shall be included with the daily reports to police, submitted by the licensee, for review by the Sheriff.

IV. Violations.

A violation of this chapter by a pawnbroker or pledgor is a misdemeanor.