

ORDINANCE NO. 09-01

AN ORDINANCE ESTABLISHING REGULATIONS FOR PAWNBROKERS AND SECONDHAND DEALERS IN THE UNINCORPORATED AREAS OF CLAY COUNTY.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSION OF
CLAY COUNTY, SOUTH DAKOTA AS FOLLOWS:

Section 1. Definitions.

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. 1. Pawnbroker. Any person, firm or corporation who:

- a. Engages in the business of lending money on the deposit or pledge of personal property, other than choices in action, securities or evidence of indebtedness; or
- b. Purchases personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price.

2. Any pawnbroker may effect the purchase of secondhand personal property for resale purposes under the terms of this ordinance by acquiring any pawn ticket of his or her own issued by transfer.

B. Secondhand Goods Dealer. Any person, firm or corporation, other than a pawnbroker or dealer in precious metals and precious gems, who purchases, collects, trades, sells or deals in the following secondhand goods; business machines, tape recorders and tapes, all radio transmitters and receivers, musical instruments, cameras and camera accessories, power tools, sporting goods, stereos, stereo equipment and records, tools and tool boxes, television sets, weapons, bicycles, radios, microwave ovens and jewelry. This definition shall exempt the following transactions:

1. Any person, firm or corporation selling new, unused articles, and any receiving or taking in used articles or trade from the purchasers of the new articles against the purchase price of the new articles which are sold for their market value;
2. Any person collecting antique items of personal use only;
3. Casual and occasional sales of used household goods by the owner thereof to the public, on a nonreceiving basis, if the seller, at time of sale, is not engaged for profit in the business of selling goods of that or a similar nature; this category includes those sales commonly referred to as garage sales;
4. Any person, firm or corporation dealing exclusively in the resale of used automobiles;
5. Any person, firm or corporation that operates a junkyard for wrecked automobiles;
6. Transactions involving goods sold on consignment; and
7. Transactions in secondhand goods at stores or events sponsored by nonprofit corporations or associations or fraternal or religious organizations.

Section 2. License-Required.

It is unlawful for any person, firm or corporation to engage in the business of pawnbroker or secondhand dealer, without first obtaining a license from the County Auditor's Office. The application for the license shall contain all pertinent information required by this ordinance and the County Auditor's Office, and shall be issued and governed in accordance with this ordinance. Any person applying for a pawnbroker's license or a secondhand dealer's license, must, before their application will be considered, come to the Clay County Sheriff's Office and furnish adequate identification. No license under

this ordinance shall be issued to any person who has been convicted of a felony; no license under this ordinance shall be issued to any corporation, 1 or more officers or directors of which have been convicted of a felony.

Section 3. License–Fee.

- A. The annual license fee for a pawnbroker’s license shall be \$100, payable in advance.
- B. The annual license fee for secondhand dealers shall be \$25, payable in advance.
- C. Any person having a business which encompasses more than 1 of the 3 designated categories set forth in this ordinance, and all businesses being conducted on 1 premises, shall obtain all appropriate licenses, but the total fee for licenses for the single premises shall not exceed \$100.

Section 4. License–Term.

All licenses issued under this ordinance shall take effect when issued and shall terminate on December 31 in the year for which issued

Section 5. License–Display.

The licenses required by Section 2 of this ordinance for pawnbrokers or secondhand dealers shall at all times be on display in a conspicuous place and available for inspection by the Clay County Sheriff or his or her designee during reasonable business hours. This section shall not apply when the license is being taken to the County Auditor’s Office to have a change of location recorded.

Section 6. Fixed premises required.

- A. No person shall engage in business as a pawnbroker or secondhand dealer unless the person has a fixed premises where the business is conducted, either on a continuing basis or from time to time, and unless the person has first obtained a license to engage in that business at that premises.
- B. For the purposes of this section, fixed premises shall include any nonmobile premises where the business is conducted and the pawned or purchased secondhand articles are held according to the provisions of Section 13 of this ordinance, whether or not that premises remains in the same location during the period the license is in effect.

Section 7. Bond.

Each pawnbroker doing business in the county shall furnish a good and sufficient bond, with a surety to be approved by the County Commission, in the sum of \$1,000, conditioned for faithful observance of this ordinance and conditioned for the safekeeping or return of all articles held in pledge of the pawnbroker.

Section 8. Separate places of business–License and bond requirements.

Any person, firm or corporation conducting several or separate places of business shall pay the appropriate license fees and procure the appropriate licenses and bond for each place of business. The above-mentioned proprietor’s license shall be sufficient for all clerks, agents and employees engaged at the place named in the license.

Section 9. Change in location of licensed premises.

If, during the effective period of a license issued under this ordinance, a pawnbroker or secondhand dealer changes the location of the licensed premises within the county, the dealer shall inform the County Auditor’s Office of the change of location and shall have the new premises to be licensed noted on the license. There shall be no additional fee charged for changing the location of the licensed premises.

Section 10. License–Suspension or revocation.

A. A license issued to a licensee under this ordinance, who shall have violated the provisions of this ordinance, may be suspended for a prescribed period not to exceed 60 days, in the event of a failure on the part of the licensee to comply with the provisions of this ordinance after 10-days written notice and a public hearing.

B. A license issued to a licensee under this ordinance, who shall have violated the provisions of this ordinance, may be revoked by the County Commission after 10-days written notice and a public hearing.

Section 11. Recordkeeping requirements.

A. Every pawnbroker shall keep books or records of pawn tickets in a manner satisfactory to the Clay County Sheriff, where he or she shall accurately and intelligibly enter, in ink, in the English language, at the time of purchasing or receiving any personal property, and after requiring and observing identification from the person seeking to pawn the property, a record of the following information:

1. The name of the person from whom the property is purchased or received, his or her place of residence and his or her date of birth;
2. A detailed and accurate description of each article, which shall include, if available, the manufacturer's name, style model number, serial number, engraved initials or other identifying marks;
3. The date and time of transaction;
4. The amount necessary for redemption;
5. The date when the article is to be redeemed; and
6. Any mortgage or bill of sale taken, or receipt of pawn ticket given.

B. Every pawnbroker shall also record the date of disposition or redemption from pawn of the article or any part or portion thereof. The disposition report shall be located in the same book and at the same place where the receiving records of the article are located.

C. Every secondhand dealer shall keep books or records for those articles listed in Section 1B. of this ordinance in a manner satisfactory to the Clay County Sheriff or his or her designee, where he or she shall accurately and intelligently enter, in ink, in the English language, at the time of purchasing or receiving any article or item, the following information:

1. The name of the person from whom the property was purchased or received, his or her place of residence and his or her date of birth;
2. Date and time of the transaction;
3. A detailed description of the item which shall include, if available, the manufacturer's name, style model number, serial number, engraved initials or other identifying marks;
4. If the seller is not known personally to the dealer or the dealer's agent, the dealer is required to obtain the person's drivers license number and the state of issuance or, if available the identifying number from at least 1 form of government-issued identification; or
5. The amount paid for the article.

D. Any person who fails to keep the records or fails to make the required entries therein, or shall intentionally or knowingly make any false or unintelligible entry, or any entry which he or she has reason to believe is untrue, or who shall fail to make the inquiries necessary to enable him or her to make the entries or any of them, or who shall fail to produce his or her records when requested by the Clay County Sheriff or his or her

designee during reasonable business hours, or who shall destroy or wilfully permit the records to be destroyed or lost, shall be guilty of a misdemeanor.

E. The records required by this section shall be maintained 1 year after the date of purchase or receipt and shall be made available for inspection to the Clay County Sheriff or his or her designee during reasonable business hours.

Section 12. Pawn tickets.

A. At the time of receiving a pledge and upon the subsequent renewal of a loan, the pawnbroker shall deliver to the pledgor or his or her agent a pawn ticket, which pawn tickets shall be correspondingly serially numbered, and shall contain the following information:

1. The name and address of the pawnbroker,
2. A generic description of the pledge with the particular details of description noted whenever possible in order to distinguish the article or articles;
3. The date and time of the transaction; and
4. The amount, duration and terms of the loan.

B. The pawnbroker may insert on the pawn ticket any other terms, conditions and information that are not inconsistent with the provisions of this ordinance.

Section 13. Holding period—New or secondhand goods purchased from individual not engaged in trade.

A. Any person licensed as a pawnbroker, who shall purchase any new or secondhand goods of any individual not engaged in trade, shall keep the same for inspection for 10 days from the time of the transfer, except on written release from the Clay County Sheriff or his or her designee. The property shall be held during this period on the licensed premises or some other secure location within the unincorporated areas of the county and shall not be disposed of or altered from the form in which it was received during this period.

B. Any person licensed as a secondhand dealer who shall purchase any new or secondhand goods stated in Section 1B. of this ordinance of any individual not engaged in trade shall either:

1. Keep the same for inspection for 10 days from the time of transfer, except on written release from the Clay County Sheriff or his or her designee. The property shall be held during this period on the licensed premises or some other secure location within the county and shall not be disposed of or altered from the form in which it was received during this period; or
2. Keep the same for 3 working days, excluding Saturdays, Sundays and calendar holidays, after delivering the required records to the clay County Sheriff's Office. The time period shall begin when the records are delivered to the Clay County Sheriff's Office. The property shall be held during this period in the licensed premises or some other secure location within the county and shall not be disposed of or altered from the form in which it was received, except on written release from the Clay County Sheriff or his or her designee.

C. When articles are acquired by a pawnbroker or secondhand dealer in a group, they shall be kept together for identification purposes and not separated until the 10-day period has elapsed, unless released prior on written authorization by the Clay County Sheriff or his or her designee.

Section 14. Holding periods—Pawned articles.

Every article of any kind or description which is taken in pawn by a pawnbroker shall be held by the pawnbroker for a period of 40 days, during which time the same shall not be shown either for sale or for inspection, to any person, other than the Clay County Sheriff or his or her designee, during reasonable business hours.

Section 15. Hold orders–Effect.

The Clay County Sheriff or any authorized law enforcement officer may, by written order, order a pawnbroker or secondhand dealer to hold any specified article or articles, deposited with or in custody of the pawnbroker or secondhand dealer, for purposes of further investigation by the Clay County Sheriff's Office, when the item or items are believed to be stolen. A hold order shall remain in effect for a period of 30 days commencing the day on which the hold order was delivered to the pawnbroker or secondhand dealer. A hold order shall supersede the provisions of Section 13 and Section 14 of this ordinance and no sale or other disposition may be made of the article or articles while the hold order remains outstanding, unless released by officers issuing the hold order.

Section 16. Lost or stolen property–Title–Liability.

A pawnbroker who accepts in pledge any article as security for a loan from a pledgor who is not the owner thereof, obtains no property in the article, either by reason of maturation of the loan or by transference of the pawn ticket to the pawnbroker by the pledgor or holder thereof. Ignorance of the fact that the pledged article was lost or stolen shall not be construed to affect the question of title, and if the pawnbroker shall sell the article to a third person, he or she shall remain liable to the original owner.

Section 17. Unlawful transactions with minors.

It is unlawful for any pawnbroker or secondhand dealer to accept any articles in pawn or purchase any secondhand personal property by acquiring a pawn ticket by transference from any person under 18 years of age.

Section 18. Inspection–Clay County Sheriff's Office authority/duty.

A. It shall be the duty of the Clay County Sheriff to periodically contact the licensed premises under this ordinance to inspect or obtain copies of records required to be kept according to Section 11 of this ordinance, setting forth a description of the person by whom they were left in pledge or sold.

B. The Clay County Sheriff or his or her designee shall have the power and authority to require the reports to be made in a manner and form subject to his or her approval.

Section 19. Inspection–Premises.

No pawnbroker or secondhand dealer or any other personnel shall refuse, resist or attempt to prevent any law enforcement officer without a warrant from examining the licensed premises occupied by the pawnbroker or secondhand dealer, or other secured premises within the unincorporated areas of the county where property is stored, during reasonable business hours for the purpose of discovering stolen property.

Section 20. Inspection–Records and pledged property–Availability.

A. The books or records required by §Section 11 of this ordinance to be kept by pawnbrokers or secondhand dealers shall be open to the inspection of the Clay County Sheriff or his or her designee during reasonable business hours.

B. The pawnbroker shall produce and show any article pledged in connection with any loan.

Section 21. Inspection–Concealing articles to prevent identification.

No pawnbroker or secondhand dealer shall conceal, secrete or destroy, for the purpose of concealing, any article purchased or received by him or her, for the purpose of preventing identification thereof by the Clay County Sheriff or his or her designee.

Adopted this 3rd day of February, 2009

Leo F. Powell

Clay County Board of Commissioners
Leo F. Powell, Chairman



ATTEST:

Kathryn Helles, Deputy

Signed: Ruth A. Bremer

Auditor, Clay County

(SEAL)



First Reading: January 27, 2009

Second Reading: February 3, 2009

Publication: February 6, 2009

Effective Date: February 26, 2009