

COUNTY OF CHEROKEE)
STATE OF GEORGIA)

ORDINANCE NO. 2011-O-005

AN ORDINANCE TO REPEAL CHAPTER EIGHTEEN (18) OF THE CODE OF ORDINANCES, CHEROKEE COUNTY, GEORGIA; TO AMEND CHAPTER THIRTY-EIGHT (38) OF THE CODE OF ORDINANCES, CHEROKEE COUNTY, GEORGIA RELATING TO PERMITTING REQUIREMENTS AND OPERATIONAL STANDARDS FOR PAWNBROKERS; TO PROVIDE FOR DEFINITIONS; TO PROMOTE THE HEALTH, SAFETY, AND WELFARE OF THE COMMUNITY; AND FOR OTHER LAWFUL PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof that the governing authority of the County may adopt clearly reasonable ordinances, resolutions and regulations; and

WHEREAS, O.C.G.A. § 36-1-20 authorizes counties to enact ordinances for protecting and preserving the public health, safety, and welfare of the population of the unincorporated areas of the County; and

WHEREAS, the governing authority of Cherokee County, to wit, the Board of Commissioners (the “Board”), desires to exercise such authority in adopting this Ordinance; and

WHEREAS, the Board previously adopted ordinances regulating pawnbrokers operating within Cherokee County, which ordinances are codified as Chapter 38, Article II of the Code of Ordinances, Cherokee County, Georgia and Chapter 18, Article 2, Division 4 of the Code of Ordinances, Cherokee County, Georgia; and

WHEREAS, the Board finds that it is in the public interest to amend the language of Chapter 38, Article II of the Code of Ordinances, Cherokee County, Georgia as set forth herein below, relating to pawnbroker requirements and to repeal Chapter 18, Article 2, Division 4 of the Code of Ordinances, Cherokee County, Georgia;

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE CHEROKEE COUNTY BOARD OF COMMISSIONERS as follows:

1.

The Code of Ordinances, Cherokee County, Georgia, Chapter 38, Article II, shall be amended in its entirety to read as follows:

Sec. 38-31. Purpose; authority.

(a) This Article is enacted for the purposes, among others, of promoting the health and general welfare of the community, and establishing reasonable and ascertainable standards for the regulation and control of pawnbrokers or similar places where money is advanced on goods or other effects, or merchandise of any kind is taken in pawn.

(b) This Article is enacted pursuant to the authority of O.C.G.A. § 44-12-135. The requirements of this Article shall be cumulative to the requirements of Title 44, Chapter 12, Article 3, Part 5 of the Official Code of Georgia.

Sec. 38-32. Compliance with Article required.

All persons, before beginning the business of operating as a pawnbroker, as herein defined, shall first file an application with the County Development Service Center for a permit to conduct such business, shall receive such permit, and shall comply with all requirements of this Article.

Sec. 38-33. Territorial applicability of Article.

The terms and provisions of this Article shall apply to all unincorporated portions of Cherokee County, except as provided for in Section 38-55 below.

Sec. 38-34. Definitions.

The following words and terms shall have the following meanings for the purposes of this Article.

Pawnbroker means any person engaged, in whole or in part, in the business of lending money on the security of pledged goods, or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time, or in the business of purchasing tangible personal property from persons or sources other than manufacturers or licensed dealers as a part of or in conjunction with the business activities described in this definition.

Person means an individual, partnership, limited partnership, limited liability company, corporation, joint venture, trust, association, or any other legal entity however organized.

Pledged goods means tangible personal property (other than choses in action, securities, or printed evidences of indebtedness), including, without limitation, all types of motor vehicles or any motor vehicle certificate of title, which property is purchased by, deposited with, or otherwise actually delivered into the possession of a pawnbroker in connection with a pawn transaction. However, for purposes of this Article, possession of any motor vehicle certificate of title which has come into the possession of a pawnbroker through a pawn transaction made in accordance with the law shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker shall retain physical possession of the motor vehicle certificate of title for the entire length of the pawn transaction but shall not be required in any way to retain physical possession of the motor vehicle at any time.

Sec. 38-35. Application.

All persons twenty-one (21) years of age or older desiring to obtain a permit required under this Article shall make written application to the County Development Service Center upon forms to be prepared by the County Development Service Center. Such application shall state the name and the address of the applicant, the place where the proposed business is to be located, the nature and character of the business to be carried on, if a corporation, the names of the officers and stockholders, if a partnership, the names of the partners, if a limited liability company, the names of the members, and such other information as may be required by the County Development Service Center, all sworn to by the applicant or agent thereof. Permitted businesses will be required to also comply with the occupation tax requirements of Chapter 18, Article 2 of the County Code. Applicants may appeal the denial of a permit within thirty (30) days in writing to the County Development Service Center, and such appeals shall be heard pursuant to the hearing procedure set forth in Section 38-42 below.

Sec. 38-36. Background investigation.

All persons filing an application for an initial permit or the renewal of a permit, as well as all proposed employees at the time of such application of any pawnbroker, shall complete a waiver in order to be checked by the state crime information center or by other criminal background verification methods to determine their record of any arrests and/or convictions on an annual basis.

Sec. 38-37. Citizenship.

- (a) No permit shall be granted hereunder to any applicant who is not a citizen of the United States.
- (b) Where the applicant is a corporation, the majority stockholder must meet the citizenship requirements of subsection (a) above.
- (c) If the applicant is a partnership, at least one general partner must meet the citizenship requirements of subsection (a) above.
- (d) If the applicant is a limited liability company, at least one member must meet the citizenship requirements of subsection (a) above.

Sec. 38-38. Issuance of permits to persons with prior convictions prohibited; exceptions.

No permit hereunder shall be issued to any person convicted of a felony, which includes, but is not limited to, burglary, theft by receiving stolen property, or any crime involving moral turpitude, unless said person has had their rights restored, in which event they must provide to the County Development Service Center documentation confirming the restoration of their rights. The term "conviction" shall include an adjudication of guilt by admission, conviction or otherwise, a plea of "nolo contendere" or the forfeiture of a bond when charged with a crime.

Sec. 38-39. General information; application restrictions.

No application for any permit hereunder shall be granted where the application shows or the County Development Service Center finds any of the following conditions to exist:

- (1) The applicant has previously had any pawnbroker permit issued by any county, municipality, or other governmental subdivision suspended or revoked for cause after a hearing.

- (2) The applicant, as the previous holder of a permit to operate as a pawnbroker, has been convicted of violating any law, regulation, or ordinance relating to such business within a one-year period immediately preceding the date of application.
- (3) The applicant has supplied false information upon his application.
- (4) The applicant has failed to pay any fee or tax owed to the County.

The permit shall be issued: if an individual or sole proprietorship, to the individual; if a corporation, to the corporation and the majority stockholder; if a partnership, to the partnership and all partners; if a limited liability company, to the limited liability company and all members.

Sec. 38-40. Transfers.

No permit granted hereunder shall be transferable, except upon application to the County Development Service Center in the same form, manner and subject to the same requirements with respect to the transferee as are applicable in an original application. When permission for transfer has been granted, either the original permittee or the transferee shall cause the permit to be delivered to the County Development Service Center, who shall record such transfer and provide the permit to the transferee, and the transferee shall pay the fee required for an original permit as a condition precedent to engaging in operations under the permit. Applicants may appeal the denial of a permit transfer within thirty (30) days in writing to the County Development Service Center, and such appeals shall be heard pursuant to the hearing procedure set forth in Section 38-42 below.

Sec. 38-41. Revocation and suspension of permit.

Subject to the provisions of the following Section 38-42, the Board of Commissioners may suspend, revoke, or place on probation (either with or without conditions), any permit issued under this Article.

Sec. 38-42. Notice and hearing.

(a) No permit issued under this Article shall be suspended (except as provided for in subsection (b)), revoked, or placed on probation, except for due cause as defined in subsection (c) hereof, and after a hearing before the Board of Commissioners upon reasonable notice to the permittee of the time, place, and purpose of such hearing and of the reason why the permit should be suspended or revoked. At least seven (7) days written notice shall be deemed reasonable.

(b) The Chairman of the Board of Commissioners may suspend a permit immediately or give seven (7) days written notice that such permit is subject to suspension when there is cause to believe that grounds exist for suspending the permit prior to the conduct of a hearing before the Board of Commissioners. This action shall be reviewed by the Board of Commissioners at its next regular meeting, or, at the request of the permittee, a special meeting of the Board of Commissioners may be called within seven (7) days after such request is filed with the County Development Service Center,

and the Board of Commissioners may either affirm or overturn the suspension after the hearing of evidence. A permit shall not be revoked or placed on probation, except upon action by the Board of Commissioners.

(c) "Due cause" for the suspension, revocation, or placement on probation of any permit shall consist of any of the following:

(1) Violation of any law, regulation, ordinance, or resolution regulating the permittee.

(2) The permittee's provision of false information to the County Development Service Center, regardless of when the County Development Service Center shall have become aware of the falsity of such information.

(3) The permittee has failed to obtain, or has suffered suspension or revocation of, any paper, permit or other document necessary in pursuance of its business, as may be required by any officer, agency, authority, or department of the county, state or the United States under authority of any law, ordinance, or resolution of the county, state or United States.

(d) The Board of Commissioners may specify conditions of operation of the permit holder during any period of probation. Such conditions shall be on file with the County Development Service Center. No probation shall extend over a period of more than twelve (12) consecutive calendar months.

Sec. 38·43. Permit fees to be set by Board of Commissioners; refund.

(a) The original permit fee and annual renewal permit fee for a permit issued hereunder shall be set by the Board of Commissioners.

(b) No permit shall be issued for less than a calendar year period, and in cases of the revocation, suspension or surrender of such permit before the expiration of such calendar year period, the holder thereof shall not be entitled to receive any refund whatsoever of all or any portion of the permit fee.

(c) All permits shall be issued for the calendar year beginning January 1, and the fee prescribed by the Board of Commissioners shall be paid in full by each person prior to issuance of a permit.

(d) Any permit issued under this Article shall expire on December 31 of the calendar year for which it was issued.

(e) No permit fee shall be prorated for any business commenced after January 1 of any calendar year, and the full amount of the annual permit fee as prescribed by the Board of Commissioners shall be payable for any business, whether commenced on or after January 1 of any calendar year.

Sec. 38·44. Permit to authorize conduct of one place of business.

Each permit issued hereunder shall authorize the conduct of business at one (1) location only, and persons doing business at more than one location within the County shall obtain a separate permit, requiring a separate fee, for each such location.

Sec. 38-45. Change of location.

Any person moving a business permitted hereunder from one (1) location to another shall notify the County Development Service Center of such move and of the new address in writing, on a form provided by the County Development Service Center, no later than within one (1) day of moving. A new permit shall be issued upon payment of a reasonable fee if the new location conforms to all applicable ordinances, resolutions, and the County's zoning and other applicable regulations.

Sec. 38-46. Permit to be displayed.

All permits issued under this Article shall be posted conspicuously in the place of business for which the permit is issued.

Sec. 38-47. Time limit for commencement of business in permitted establishment; forfeiture for nonuse.

(a) All holders of permits hereunder must, within three (3) months after approval of the permit, open for business the establishment referred to in the permit, unless a time extension is granted by the Board of Commissioners. Failure to open the permitted establishment within such three-month period shall serve as an automatic forfeiture and cancellation of the unused permit, and no refund of permit fees shall be made to the permit holder.

(b) Any holder of a permit hereunder who shall begin the operation of the business as authorized in the permit, but who shall for a period of three (3) consecutive months thereafter cease to operate the business as authorized in the permit, shall upon completion of such three-month period automatically forfeit the permit, which permit shall, by virtue of such failure to operate, be cancelled without the necessity of any action of the Board of Commissioners.

Sec. 38-48. Renewal.

Any pawnbroker permitted under this Article shall register with the County Development Service Center, apply for renewal of the existing permit, and pay the annual permit renewal fee no later than February 15 of each calendar year in which it does business.

Sec. 38-49. Records to be kept; information to be shown; inspection authorized.

(a) All pawnbrokers shall keep books in compliance with state law, wherein there shall be entered an accurate description of all articles pledged or sold to them. Such description shall include:

- (1) The name of the manufacturer of the article;
- (2) Any identifying marks or numbers on the article; and
- (3) A statement of the kind of material of which the article is made.

(b) In such books there shall be entered also:

- (1) The name of the person by whom the article was deposited or sold; and
- (2) The time when the transaction was accomplished.

(c) These entries shall be made immediately upon the completion of each transaction.

(d) Such books, and the articles themselves so pledged or sold, shall at all times be subject to inspection and examination by any duly authorized law enforcement officer.

(e) Any person engaged in business as a pawnbroker who shall fail or refuse to keep books as provided in this section, or who shall make false entries in such books, or who shall fail or refuse to permit an inspection and examination by any duly authorized law enforcement officer of the books and of the articles pledged with or sold to them shall be in violation of this Article.

Sec. 38-50. Consignment sales prohibited.

Under no circumstances will any pawnbroker receive articles from another individual for the purpose of selling the article for the individual and remitting a portion of the sale prices to said individual.

Sec. 38-51. Pawn Tickets and Daily Reports.

(a) Pawnbrokers will make daily reports to the Sheriff's Office in the manner prescribed by the Sheriff or his Designee.

(b) Pawnbrokers shall capture an image, with a digital camera, of the person pledging, trading, pawning, exchanging, or selling the article. The image shall clearly show a frontal view of the subject's face along with the pawnbroker's ticket transaction number. Digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.

(c) The Pawnbroker shall obtain from each person pledging, trading, pawning, exchanging, or selling any article, the fingerprint (using an electronic digital fingerprint scanner) of the right hand index finger, unless such finger is missing, in which event the print of the next finger in existence on the right hand shall be obtained with a notation as to the exact finger printed.

The fingerprint shall be imprinted onto the pawn transaction form in the designated area along with the signature of the person pawning, trading, pledging, exchanging, or selling the article.

The fingerprint must be clear and legible. In the event that more than one transaction form is required, a fingerprint and signature shall be obtained for each form. Fingerprints and the information required herein shall be obtained each time such person pledges, trades, pawns, exchanges, or sells any article.

(d) A digital image shall be made, with a digital camera, at the time of acquisition of any article and of the article's serial number, which number shall be clearly visible and readable in the images if imprinted on the article.

If the article was never imprinted with any type of serial number, then the image shall show the entire article. All such digital images shall be labeled and stored in such a manner that they are safe from corruption, readily identifiable, and readily available for review.

(e) All persons who enter a pawnbroker business and attempt to sell or pawn an article must provide proper photo identification. Identification which is acceptable will be in the form of a United States Drivers License, a state I.D. card, or a government identification card (military I.D.). In the event one of the mentioned identifications cannot be produced, then the transaction is void.

(f) Paper printouts of each transaction's documentation required by this Section, which shall include any documentation or information provided by the person pawning the article to the pawnbroker, shall be made by the pawnbroker and stored on premises for inspection by the Sheriff or his Designee.

(g) Daily reports shall also include any other information or documentation provided by the person pawning the article to the pawnbroker, as well as any documentation of the transaction in the pawnbroker's possession.

(h) To the extent that the pawnbroker utilizes security cameras, video surveillance tapes shall be maintained for a minimum of thirty (30) days and made available to the Sheriff's Office as requested.

Sec. 38-52. Pawned merchandise not to be disposed of for forty days.

(a) Regarding any and all articles not redeemed by the person who pawned the article by the maturity date (30 days), the pawnbroker must hold the pawned article for an additional ten-day grace period before disposing of the article or placing the article in public view for sale.

(b) In the event the pawnbroker purchases the article instead of the pledge, then the pawnbroker is required to hold the article for 30 days before disposing of the article or placing the article in public view for sale.

Sec. 38-53. Dealing with minors.

It shall be unlawful for any pawnbroker, his agents or employees, to receive in pawn, pledge or sale, goods of any character or description from a minor. For the purposes of this section, a minor is any individual 17 years of age or under.

Sec. 38-54. Employees to be fingerprinted and identification displayed.

As explained in section 38-36, the applicant as well as its employees shall complete a basic criminal background check. If approved by the County Development Service Center, the applicant and each of its employees will receive an identification card. This identification card will include a photo, their name and the name of the business. An employee identification card shall be required for any employee of a pawnbroker and may be denied for any of the reasons (excepting citizenship) that a pawnbroker permit may be denied to an applicant under this Article.

Prospective employees may appeal the denial of an employee identification card within thirty (30) days in writing to the County Development Service Center, and such appeals shall be heard pursuant to the hearing procedure set forth in Section 38-42 above.

Sec. 38-55. Enforcement of Article.

This Article shall be enforced by the Cherokee County Sheriff or his designee. This Article shall not apply to incorporated portions of the County, unless it is expressly adopted by the applicable local municipal governing authority. Pursuant to O.C.G.A. § 16-11-173(b), firearms shall not be regulated pursuant to this Article. However, pawnbrokers must comply with all requirements, including but not limited to record-keeping requirements for firearms as specified in O.C.G.A. § 44-12-132, of Title 44, Chapter 12, Article 3, Part 5 of the Official Code of Georgia Annotated, and shall be subject to all applicable criminal penalties under State law for any violation of same.

Sec. 38-56. Violation; Penalty.

It shall be unlawful and a violation of this Article for any person to fail to comply with any provision of this Article. Any violation of any provision of this Article shall subject the pawnbroker or person, as applicable, to citation returnable to the Magistrate Court of Cherokee County, Georgia and shall be subject to fines and/or imprisonment as provided for in Section 1-12 of the Code of Ordinances, Cherokee County, Georgia.

2.

Remaining Portions Unaffected. Except as specified herein, all remaining portions of the Code of Ordinances, Cherokee County, Georgia shall continue in full force and effect, and shall remain unaffected by this amendment.

3.

Severability. It is the express intent of the Cherokee County Board of Commissioners that this Ordinance be consistent with both federal and State law. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

4.

Conflicting Ordinances Repealed. Any and all Ordinances or parts of Ordinances in conflict herewith shall be, and the same are, hereby repealed to the extent of such conflict. Additionally, Resolution No. 92-17 adopted February 28, 1992 (codified at Chapter 18, Article 2, Division 4 of the Code of Ordinances, Cherokee County, Georgia) and Ordinance No. 94-2 adopted February 8, 1994 are hereby repealed in their entirety.

5.

Effective Date. This Ordinance shall become effective immediately upon passage.

SO ORDAINED this **19th** day of **April 2011**.