

City of Wadena Policy on Bad Checks Investigative & Prosecution

As consumers and taxpayers, we all pay higher prices because of the losses associated with people issuing worthless checks. Law enforcement and prosecuting attorneys spend significant resources investigating and prosecuting people who issue worthless checks.

Regarding worthless checks, the City of Wadena has implemented a worthless check policy.

The main goals of the City of Wadena's policy are:

- * Restitution for victims
- * Increase accountability of people who issue worthless checks
- * Educate and assist Wadena merchants and residents in reducing the number of worthless check cases
- * Reduce the costs to law enforcement associated with investigating worthless check cases

The City of Wadena has adopted the following guidelines and procedures to address fraudulent checks and the acceptance of checks, to include the investigation and successful prosecution of fraudulent checks. These guidelines and procedures have been put into policy and formulated together with the participation of the City Attorney's office.

Procedure for bad checks

- Review the packet of information on bad check prosecution. These are available from the Police Department. It contains all of the necessary forms.
- Instruct your cashiers on the procedure for accepting checks. They should ask to see a driver's license or other picture identification, which gives the full name and date of birth of the signor. They should note that information on the check and sign their initials. Also see *Requirements for accepting checks* below.
- As soon as you get the IRD (Image Replacement Document) check returned from the bank you should begin the notice process. You may attempt to deposit the check twice, but you are not required to do so.
- Send the Notice and Demand for Payment to the signor at the address printed on the check or a more current address if one was provided to the cashier. Complete the Affidavit of Mailing *after* you mail the Notice. The Affidavit must be signed in the presence of a Notary Public. You are welcome to bring those to the police department to be notarized.

- You may include your fee with the Notice and Demand for Payment form. The prosecuting attorney may ask for that to be collected as part of restitution upon conviction.
- After 5 days have passed since you mailed the Notice and if signor has not made payment in full, you should bring the original check or IRD, a copy of the Notice, the original Affidavit, and the completed Questionnaire sheet to the Wadena Police Department.
- The police department will review the documents and if everything is complete, they will bring them to the Attorney's Office for a complaint. The police will sign the formal complaint for you if they are confident they can identify the signor. If not, the check may not be sent for prosecution. The City Attorney shall then invoice the City for their services for an approved amount per bad check for prosecution.

Requirements for accepting checks before submitting for prosecution

To assist Law Enforcement's efforts in the investigation of bad checks, merchants need to verify photographic identification of anyone submitting a check for payment to that merchant. It further requests the merchant to write certain ID information on the check. These steps provide a measure of protection for everyone that both writes the check and accepts the checks, and assists our office with the prosecution of the bad check.

ID required: The merchant must review a photo ID (driver's license of check writer). The merchant must **write on the check** the ID number, middle name **and** date of birth shown on the ID. It will not be sufficient for the merchant to merely ask if everything on the check is correct. It will not be sufficient for the merchant to review a social security card either; or any other form of non-photo ID.

Other helpful information: Compare the address on the ID and on the check, and if they are different ask which one is current. Ask for a phone number too; write that in the memo line. The merchant must initial the check to easily identify who accepted the bad check. Also write on the check, the time of day the check was written.

Checks written under the amount of \$40 will not be investigated or prosecuted; unless there are multiple businesses that have checks from the same signer/defendant and a totality of those checks are over \$40 and were written in a close time frame.

If the police department does not have enough information to positively identify the check writer due to lack of information from the merchant, then the bad check will not be investigated any further; and therefore will not be sent for prosecution.

What if the signor wants to pay the check?

If they come in before you have turned the matter over to the police, you should accept their money and no charges will be filed. If you accept partial payment or a substitute check, which also bounces, the City cannot prosecute the matter later if you don't get all your money.

If they come in after the matter has been turned over to the police, you may not accept their money. You should tell them that it has already been turned over and there is nothing you can do about it. It is the decision of the police and prosecutor whether or not to drop charges. They should contact the Wadena Police Department.

What checks will not be prosecuted?

The police department will not accept checks for prosecution, which a business has been holding. Checks should be turned in within 30 days of when they are written or within 20 days of when the NSF notice comes from the bank. After a check is three months old the chances of apprehending the signor are decreased.

Checks that do not have the driver's license number or full name and date of birth noted by the clerk cannot be prosecuted. Without positive identification a signor cannot be arrested.

Checks that come in from the same business written by the same signor on a regular basis will not be accepted. If a person is writing bad checks to a business on a regular basis, the checks should not be accepted. The City will not file charges against the same person month after month if the business is still willing to take their check.

In an effort to utilize resources most effectively, checks written under the amount of \$40 will not be investigated or prosecuted; unless there are multiple businesses that have checks from the same signer/defendant and a totality of those checks are over \$40 and were written in a close time frame. It will be the discretion of the police department and the prosecuting attorney's office in determining this.

When does the business get its money back?

Each business will be notified when a person is convicted or pleads guilty to writing a bad check. Upon conviction the signor will be required to reimburse the amount of the bad check. They pay the money to the Court and the Court will mail it to the business. This may take some time. Many defendants must make the payments in installments and may be paying off more than one bad check. If six months pass after the conviction and you have not received your money, call the Court Administrator to find out if the payments are being made.

If the business has not been notified within four months after the check was turned over to the police, it is most likely that the defendant did not appear in Court and an arrest warrant has been issued. After the four months have passed, you may call the Wadena Police Department and request a status report. If the warrant is dismissed because there is not positive identification, the business will be notified.

Instructions for Handling Bad Checks


Minnesota Statute requires that the holder of the check returned NSF inform the writer of a bad check that the check has been returned NSF. There are specific forms that need to be sent to the author of the check to place him/her on notice of the bad check. Attached to these instructions, please find copies of the forms that you will have to send to the writer of the check, along with a **copy** of **their** check. One form is the Notice and Demand; this gives the writer five days in order to pay the check in full. The second is an Affidavit of Service by Mail; this is to prove that you have, in fact, notified the author of the check of the problem. The forms are constructed so that you can merely photocopy them and fill in the appropriate blanks. After you have filled out the forms, you need to keep a copy of what you have sent, so you can prove notice has been sent. The Questionnaire form should be filled out for investigative use.

If the check has not been made good within five days, it is appropriate to prosecute the writer. It is at this point that you should bring the check or IRD and forms to the Wadena Police Department. Office staff will collect all your information and documents. You **must** have: the original check or IRD, Notice and Demand, the Affidavit of Service by Mail, Questionnaire.

The easiest way for you to comply with these requirements is to instruct your cashiers to ask to see a driver's license. The clerk should look to see if the picture on the license is that of the person writing the check. (Your cashier may have to identify that person in Court at some time.) The driver's license number should be written on the check, along with the cashier's initials. If the person does not have a driver's license, the clerk should get the writer's date of birth and ask to see some type of picture identification.

Policy adopted by the Wadena City Council this 11th day of July 2017.


Bradley A. Swenson
City Administrator


George Deiss
Mayor

QUESTIONNAIRE

**PLEASE ANSWER THE FOLLOWING QUESTIONS AND RETURN THIS FORM TO THE
WADENA POLICE DEPARTMENT – 121 SE Colfax Avenue, Wadena, MN 56482**

Person who made and presented the check:

Name: _____
Address: _____
Date of birth of Minnesota Driver's License or Minnesota Identification
Number: _____
Male or Female: _____

Check Description:

Name of the Bank: _____
Date of the Check: _____
Check payable to: _____
Amount of the check: _____
Reason for the Bank's refusal to honor the check: _____
Check was given for: Cash: _____ Merchandise: _____ Both: _____

Name and Job title of person to whom the check was presented: _____

Complainant (Person signing the complaint):

Name: _____ Job Title: _____
Store Name (if any): _____
Address: _____
Telephone Number: _____

Name and job title of person who received the check when returned by the Bank: _____

Name and job title of person who mailed the notice to the maker of the check: _____

Questions:

1. Other than the receipt of the check and the mailing notice to the drawer, have you had any contact with the drawer? _____

2. If the answer to the question 1 is yes, did the drawer give or attempt to give any explanation or excuse for the Bank's refusal to honor the check? _____

3. If the answer to question 2 is yes, what was the explanation or excuse given? _____

4. Was the check post-dated when it was received? _____
5. Was there any agreement to hold this check for some time before cashing it? _____
6. If so, how long? _____ Date check was deposited? _____
7. Did the maker or passer of the check make any statement to the effect that there were no funds in the Bank with which to pay the check? If so, what was said? _____

8. Was the check received as payment on an account or for a past due debt? _____
9. Have you received or accepted part payment on this check? _____
10. Could you or your employees identify the party that passed this check? Y or N

REMARKS: _____

Signature of person submitting Questionnaire

Position of person signing Questionnaire

RETURN THIS FORM TOGETHER WITH THE CHECK/CHECK COPY AND A COPY OF THE NOTICE SENT TO THE DRAWER, TO THE WADENA POLICE DEPARTMENT, 121 SE COLFAX AVENUE, WADENA, MN 56482