

**City of Carson City
Agenda Report**

Date Submitted: September 11, 2012 Agenda Date Requested: September 20, 2012
Time Requested: 15 minutes

To: Board of Supervisors

From: Neil Rombardo, District Attorney

Subject Title: For Possible Action: To introduce, on first reading, Bill No.____, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 8, PUBLIC PEACE, SAFETY AND MORALS, CHAPTER, 8.04 PROHIBITED CONDUCT, SECTION 8.04.121 THEFT OFFENSES—DEFINITIONS—PUNISHMENT, BY AMENDING THE THRESHOLD DOLLAR AMOUNT FOR WHICH A MISDEMEANOR OFFENSE MAY BE CHARGED, AND BY AMENDING SECTION 8.04.122 DEFRAUDING COMMERCIAL PROPRIETORS, TAXICAB OPERATORS, BY AMENDING THE THRESHOLD DOLLAR AMOUNT FOR WHICH A MISDEMEANOR OFFENSE MAY BE CHARGED, AND BY ADDING A MANDATE THAT THE COURT ORDER THE PERSON WHO COMMITTED THE THEFT TO PAY RESTITUTION, AND OTHER MATTERS PROPERLY RELATED THERETO.

Staff Summary: The proposed change to Title 8, Chapter 8.04, makes the Carson City Municipal Code's definition more consistent with the existing definition of assault under NRS 200.471.

Type of Action Requested: (check one)
 Resolution Ordinance First Reading
 Formal Action/Motion Other (Specify) Information Only

Does This Action Require A Business Impact Statement: Yes No

Recommended Board Action: I move to introduce on first reading, Bill No.____, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 8, PUBLIC PEACE, SAFETY AND MORALS, CHAPTER, 8.04 PROHIBITED CONDUCT, SECTION 8.04.121 THEFT OFFENSES—DEFINITIONS—PUNISHMENT, BY AMENDING THE THRESHOLD DOLLAR AMOUNT FOR WHICH A MISDEMEANOR OFFENSE MAY BE CHARGED, AND BY AMENDING SECTION 8.04.122 DEFRAUDING COMMERCIAL PROPRIETORS, TAXICAB OPERATORS, BY AMENDING THE THRESHOLD DOLLAR AMOUNT FOR WHICH A MISDEMEANOR OFFENSE MAY BE CHARGED, AND BY ADDING A MANDATE THAT THE COURT ORDER THE PERSON WHO COMMITTED THE THEFT TO PAY RESTITUTION, AND OTHER MATTERS PROPERLY RELATED THERETO.

Explanation for Recommended Board Action: Explanation for Recommended Board Action: On October 1, 2011, the threshold amounts for financial crimes such as

petty larceny, grand larceny, theft, were changed from the threshold amount of \$250.00 to \$650.00 by the Legislators. This change in State law could nullify the current CCMC. Given this, the proposed changes are consistent with the dollar value amounts as provided in the NRS. The addition of the mandatory restitution order by the court will help ensure that victims of crime are made whole.

Applicable Statute, Code, Policy, Rule or Regulation: CCMC Title 8; NRS 205.0832, 205.0835, 205.240, 205.275, 205.380, 205.445

Fiscal Impact: Impact neutral

Explanation of Impact: n/a

Funding Source: n/a

Alternatives: 1) Refer back to staff and District Attorney's office for further review
2) Do not adopt the ordinance (leave the code the same way it is now)

Supporting Material: 1) CCMC Title 8, Chapter 8.04
2) NRS

Prepared By: Tina Russom, Deputy D.A.

Reviewed By:	_____	Date: _____
	(Department Head)	
	_____	Date: <u>9/11/12</u>
	(City Manager)	
	_____	Date: <u>9/11/12</u>
	(District Attorney)	
	<u>Nancy Paulson</u>	Date: <u>9/11/12</u>
	(Finance Director)	

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

ORDINANCE NO. _____

BILL NO. _____

AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE TITLE 8, PUBLIC PEACE, SAFETY AND MORALS, CHAPTER, 8.04 PROHIBITED CONDUCT, SECTION 8.04.121 THEFT OFFENSES—DEFINITIONS—PUNISHMENT, BY AMENDING THE THRESHOLD DOLLAR AMOUNT FOR WHICH A MISDEAMENOR OFFENSE MAY BE CHARGED, AND BY AMENDING SECTION 8.04.122 DEFRAUDING COMMERCIAL PROPRIETORS, TAXICAB OPERATORS, BY AMENDING THE THRESHOLD DOLLAR AMOUNT FOR WHICH A MISDEAMONR OFFENSE MAY BE CHARGED, AND BY ADDING A MANDATE THAT THE COURT ORDER THE PERSON WHO COMMITTED THE THEFT TO PAY RESTITUTION, AND OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF SUPERVISORS OF CARSON CITY DO ORDAIN:

Section I: Title 8, Chapter 4, Section 8.04.121 of the Carson City Municipal Code ("CCMC") is hereby amended as follows:

8.04.121 - Theft offenses—Definitions—Punishment.

1. Definitions:

- a. "Check" means any check, draft or other negotiable instrument of any kind.
- b. "Control" means to act so as to prevent a person from using his own property except on the actor's terms.
- c. "Deprive" means to withhold a property interest of another person permanently or for so long a time that a substantial portion of its value, usefulness or enjoyment is lost, or to withhold it with the intent to restore it only upon the payment of a reward or other compensation, or to transfer or dispose of it so that is unlikely to be recovered.
- d. "Draw" means making, drawing, uttering, preparing, writing or delivering a check.
- e. "Issue" means to deliver or cause to be delivered a check to a person who by that delivery acquires a right against the drawer of the check. A person who

draws a check with intent that it be so delivered shall be deemed to have issued it if the delivery occurs.

f. "Obtain" means to bring about or receive the transfer of any interest in property, or to secure performance of a service.

g. "Property of another person" means property in which any person other than the defendant has an interest which the defendant is not privileged to infringe, including property in which the defendant also has an interest, notwithstanding that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

h. "Services" includes labor, professional services, transportation, cable television, telephone, gas or electricity services, accommodations in hotels, restaurants, leased premises or elsewhere, admissions to exhibitions and the use of vehicles or other movable property.

i. "Transfer" means to change the possession or control of property.

j. "Value" means the fair market value of the property or services at the time of the theft. The value of a written instrument which does not have a readily ascertainable market value is the greater of the face amount of the instrument or the amount of economic loss to the owner of the instrument resulting from the deprivation of the instrument. The trier of fact shall determine the value of all other property whose value is not readily ascertainable, and may, in making the determination, consider all relevant evidence, including evidence of the value of the property to its owner.

2. Theft offenses: A person commits theft if, without lawful authority, he knowingly:

a. Controls any property of another person with the intent to deprive that person of the property;

b. Converts, makes an unauthorized transfer of an interest in, or without authorization controls any property of another person, or uses the services or property of another person, entrusted to him or placed in his possession for a limited, authorized period of determined or prescribed duration or for a limited use;

c. Obtains real or personal property or the services of another person by a material misrepresentation with intent to deprive that person of the property or

services. As used in this subsection, "material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act;

d. Comes into control of lost, mislaid or misdelivered property of another person under circumstances providing means of inquiry as to the true owner and appropriates that property to his own use or that of another person without reasonable efforts to notify the true owner;

e. Controls property of another person knowing or having reason to know that the property was stolen;

f. Obtains services which he knows are available only for compensation without paying or agreeing to pay compensation or diverts the services of another person to his own benefit or that of another person without lawful authority to do so;

g. Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent to defraud that person;

h. Commits any act that is declared to be theft by a specific statute; or

i. Draws or passes a check, and in exchange obtains property or services, if he knows that the check will not be paid when presented.

3. Conduct denominated theft in subsections 1 or 2 of this section constitutes a single offense embracing the separate offenses commonly known as larceny, receiving or possessing stolen property, embezzlement, obtaining property by false pretenses, issuing a check without sufficient money or credit, and other similar offenses.

A criminal charge of theft may be supported by evidence that an act was committed in any manner that constitutes theft pursuant to subsections 1 and 2 of this section, notwithstanding the specification of a different manner in the criminal complaint, subject to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief if it determines that, in a specific case, strict application of the provisions of this section would result in prejudice to the defense by lack of fair notice or by surprise.

4. The amount involved in a theft shall be deemed to be the highest value, by any reasonable standard, of the property or services which are obtained. Amounts involved in thefts committed pursuant to a scheme or continuing course of conduct, whether from one (1) or more persons, may be aggregated in determining the grade of the offense.

5. Unless a greater penalty is imposed by a specific statute, for the violation of any provision of subsections 1 and 2 of this section, if the value of the property or services obtained was less than [~~two hundred fifty dollars (\$250.00)~~] six hundred fifty dollars (\$650.00), the person who committed the theft shall be punished by imprisonment in the county jail for not more than six (6) months, or by a fine of not more than one thousand dollars (\$1,000.00), or by both fine and imprisonment.

6. in addition to any other penalty, the court shall order the person who committed the theft to pay restitution.

Section II: Title 8, Chapter 4, Section 8.04.122 of the Carson City Municipal Code ("CCMC") is hereby amended as follows:

8.04.122 - Defrauding commercial proprietors, taxicab operators.

1. It is unlawful for any person:

(a) To obtain food, lodging, merchandise or other accommodations at any hotel, inn, trailer park, motor court, boardinghouse, rooming house, lodging house, furnished apartment house, furnished bungalow court, furnished auto camp, eating house, restaurant, grocery store, market or dairy, without paying therefor, with intent to cheat or defraud the proprietor or manager thereof;

(b) To obtain credit at a hotel, inn, trailer park, motor court, boardinghouse, roominghouse, lodginghouse, furnished apartment house, furnished bungalow court, furnished auto camp, eating house, restaurant, grocery store, market or dairy by the use of any false pretense; or

(c) After obtaining credit, food, lodging, merchandise or other accommodations at a hotel, inn, trailer park, motor court, boardinghouse, roominghouse, lodginghouse, furnished apartment house, furnished bungalow court, furnished auto camp, eating house, restaurant, grocery store, market or dairy, to abscond or surreptitiously, or by force, menace or threats, to remove any part of his baggage therefrom, without paying for his food or accommodations;

(d) To obtain transportation from any location to any place within Carson City in a taxicab or other licensed public conveyance, without paying therefor, with intent to cheat or defraud the owner or driver thereof.

2. Any person who violates any of the provisions of subsection 1, where the total value of the credit, food, lodging, merchandise, transportation or other accommodations received from any one (1) proprietor or operator is less than [~~two hundred fifty dollars (\$250.00)~~] six hundred fifty dollars (\$650.00) or the

dollar amount set forth in NRS 205.445, is guilty of a misdemeanor and shall be punished as provided in CCMC 1.08.010

3. Proof that credit, food, lodging, merchandise, transportation or other accommodations were obtained by false pretense, or by false or fictitious show or pretense of any baggage or other property, or that the person refused or wilfully neglected to pay for such credit, food, lodging, merchandise, transportation or other accommodations, or that he gave in payment for such credit, food, lodging, merchandise, transportation or other accommodations negotiable paper on which payment was refused, or that he absconded without paying or offering to pay for such credit, food, lodging, merchandise, transportation or other accommodations, or that he surreptitiously removed or attempted to remove his baggage, shall be prima facie evidence of the fraudulent intent mentioned in this section.

4. This section does not apply where there has been an agreement in writing for delay in payment for a period to exceed ten (10) days.

Section III: That no other provisions of the Carson City Municipal Code are affected by this ordinance.

PROPOSED on _____ (month) _____ (day), 2012.

PROPOSED by _____.

PASSED _____ (month) _____ (day), 2012.

VOTE: AYES: SUPERVISORS: _____

NAYS: SUPERVISORS: _____

ABSENT: SUPERVISORS: _____

Robert Crowell, Mayor

|
ATTEST:

ALAN GLOVER
CLERK/RECORDER.

This ordinance shall be in force and effect from and after the ___ day of the month of _____ of the year, 2012.

NRS 205.0832 Actions which constitute theft.

1. Except as otherwise provided in subsection 2, a person commits theft if, without lawful authority, the person knowingly:

(a) Controls any property of another person with the intent to deprive that person of the property.

(b) Converts, makes an unauthorized transfer of an interest in, or without authorization controls any property of another person, or uses the services or property of another person entrusted to him or her or placed in his or her possession for a limited, authorized period of determined or prescribed duration or for a limited use.

(c) Obtains real, personal or intangible property or the services of another person by a material misrepresentation with intent to deprive that person of the property or services. As used in this paragraph, "material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

(d) Comes into control of lost, mislaid or misdelivered property of another person under circumstances providing means of inquiry as to the true owner and appropriates that property to his or her own use or that of another person without reasonable efforts to notify the true owner.

(e) Controls property of another person knowing or having reason to know that the property was stolen.

(f) Obtains services or parts, products or other items related to such services which the person knows are available only for compensation without paying or agreeing to pay compensation or diverts the services of another person to his or her own benefit or that of another person without lawful authority to do so.

(g) Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent to defraud that person.

(h) Commits any act that is declared to be theft by a specific statute.

(i) Draws or passes a check, and in exchange obtains property or services, if the person knows that the check will not be paid when presented.

(j) Obtains gasoline or other fuel or automotive products which are available only for compensation without paying or agreeing to pay compensation.

2. A person who commits an act that is prohibited by subsection 1 which involves the repair of a vehicle has not committed theft unless, before the repair was made, the person received a written estimate of the cost of the repair.

(Added to NRS by 1989, 1204; A 1999, 2706; 2001, 3024)

NRS 205.0835 Penalties.

1. Unless a greater penalty is imposed by a specific statute and unless the provisions of NRS 205.08345 apply under the circumstances, a person who commits theft in violation of any provision of NRS 205.0821 to 205.0835, inclusive, shall be punished pursuant to the provisions of this section.

2. If the value of the property or services involved in the theft is less than \$650, the person who committed the theft is guilty of a misdemeanor.

3. If the value of the property or services involved in the theft is \$650 or more but less than \$3,500, the person who committed the theft is guilty of a category C felony and shall be punished as provided in NRS 193.130.

4. If the value of the property or services involved in the theft is \$3,500 or more, the person who committed the theft is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

5. In addition to any other penalty, the court shall order the person who committed the theft to pay restitution.

(Added to NRS by 1989, 1205; A 1995, 1216; 1997, 340; 2007, 683; 2011, 162)

NRS 205.240 Petit larceny; penalty.

1. Except as otherwise provided in NRS 205.220, 205.226, 205.228 and 475.105, a person commits petit larceny if the person:

(a) Intentionally steals, takes and carries away, leads away or drives away:

(1) Personal goods or property, with a value of less than \$650, owned by another person;

(2) Bedding, furniture or other property, with a value of less than \$650, which the person, as a lodger, is to use in or with his or her lodging and which is owned by another person; or

(3) Real property, with a value of less than \$650, that the person has converted into personal property by severing it from real property owned by another person.

(b) Intentionally steals, takes and carries away, leads away, drives away or entices away one or more domesticated animals or domesticated birds, with an aggregate value of less than \$650, owned by another person.

2. Unless a greater penalty is provided pursuant to NRS 205.267, a person who commits petit larceny is guilty of a misdemeanor. In addition to any other penalty, the court shall order the person to pay restitution.

[1911 C&P § 374; A 1947, 85; 1949, 127; 1943 NCL § 10324]—(NRS A 1965, 300, 1007; 1967, 500; 1969, 531; 1983, 547; 1985, 751; 1989, 1434; 1995, 13; 1997, 342, 1114; 1999, 3109; 2009, 1243; 2011, 165)

NRS 205.275 Offense involving stolen property: Definition; penalty; restitution; prima facie evidence; determination of value of property.

1. A person commits an offense involving stolen property if the person, for his or her own gain or to prevent the owner from again possessing the owner's property, buys, receives, possesses or withholds property:

(a) Knowing that it is stolen property; or

(b) Under such circumstances as should have caused a reasonable person to know that it is stolen property.

2. A person who commits an offense involving stolen property in violation of subsection 1:

(a) If the value of the property is less than \$650, is guilty of a misdemeanor;

(b) If the value of the property is \$650 or more but less than \$3,500, is guilty of a category C felony and shall be punished as provided in NRS 193.130; or

(c) If the value of the property is \$3,500 or more or if the property is a firearm, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

3. In addition to any other penalty, the court shall order the person to pay restitution.

4. A person may be prosecuted and convicted pursuant to this section whether or not the principal is or has been prosecuted or convicted.

5. Possession by any person of three or more items of the same or a similar class or type of personal property on which a permanently affixed manufacturer's serial number or manufacturer's identification number has been removed, altered or defaced, is prima facie evidence that the person has violated this section.

6. For the purposes of this section, the value of the property involved shall be deemed to be the highest value attributable to the property by any reasonable standard.

7. As used in this section, "stolen property" means property that has been taken from its owner by larceny, robbery, burglary, embezzlement, theft or any other offense that is a crime against property, whether or not the person who committed the taking is or has been prosecuted or convicted for the offense.

[1911 C&P § 383; A 1951, 29]—(NRS A 1967, 502; 1971, 925; 1979, 561, 1445; 1989, 1434; 1995, 13, 1223, 1323; 1997, 344; 1999, 402; 2011, 166)

NRS 205.380 Obtaining money, property, rent or labor by false pretenses.

1. A person who knowingly and designedly by any false pretense obtains from any other person any chose in action, money, goods, wares, chattels, effects or other valuable thing, including rent or the labor of another person not his or her employee, with the intent to cheat or defraud the other person, is a cheat, and, unless otherwise prescribed by law, shall be punished:

(a) If the value of the thing or labor fraudulently obtained was \$650 or more, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$10,000, or by both fine and imprisonment. In addition to any other penalty, the court shall order the person to pay restitution.

(b) If the value of the thing or labor fraudulently obtained was less than \$650, for a misdemeanor, and must be sentenced to restore the property fraudulently obtained, if it can be done, or tender payment for rent or labor.

2. For the purposes of this section, it is prima facie evidence of an intent to defraud if the drawer of a check or other instrument given in payment for:

(a) Property which can be returned in the same condition in which it was originally received;

(b) Rent; or

(c) Labor performed in a workmanlike manner whenever a written estimate was furnished before the labor was performed and the actual cost of the labor does not exceed the estimate,

— stops payment on that instrument and fails to return or offer to return the property in that condition, or to specify in what way the labor was deficient within 5 days after receiving notice from the payee that the instrument has not been paid by the drawee.

3. The notice must be sent to the drawer by certified mail, return receipt requested, at the address shown on the instrument. The notice must include a statement of the penalties set forth in this section. Return of the notice because of nondelivery to the drawer raises a rebuttable presumption of the intent to defraud.

4. A notice in boldface type clearly legible and in substantially the following form must be posted in a conspicuous place in every principal and branch office of every bank and in every place of business in which retail selling is conducted or labor is performed for the public and must be furnished in written form by a landlord to a tenant:

The stopping of payment on a check or other instrument given in payment for property which can be returned in the same condition in which it was originally received, rent or labor which was completed in a workmanlike manner, and the failure to return or offer to return the property in that condition or to specify in what way the labor was deficient within 5 days after receiving notice of nonpayment is punishable:

1. If the value of the property, rent or labor fraudulently obtained was \$650 or more, as a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

2. If the value of the property, rent or labor so fraudulently obtained was less than \$650, as a misdemeanor by imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$1,000, or by both fine and imprisonment.

NRS 205.445 Defrauding proprietor of hotel, inn, restaurant, motel or similar establishment.

1. It is unlawful for a person:

(a) To obtain food, foodstuffs, lodging, merchandise or other accommodations at any hotel, inn, trailer park, motor court, boardinghouse, rooming house, lodging house, furnished apartment house, furnished bungalow court, furnished automobile camp, eating house, restaurant, grocery store, market or dairy, without paying therefor, with the intent to defraud the proprietor or manager thereof;

(b) To obtain credit at a hotel, inn, trailer park, motor court, boardinghouse, rooming house, lodging house, furnished apartment house, furnished bungalow court, furnished automobile camp, eating house, restaurant, grocery store, market or dairy by the use of any false pretense; or

(c) After obtaining credit, food, lodging, merchandise or other accommodations at a hotel, inn, trailer park, motor court, boardinghouse, rooming house, lodging house, furnished apartment house, furnished bungalow court, furnished automobile camp, eating house, restaurant, grocery store, market or dairy, to abscond or surreptitiously, or by force, menace or threats, to remove any part of his or her baggage therefrom, without paying for the food or accommodations.

2. A person who violates any of the provisions of subsection 1 shall be punished:

(a) Where the total value of the credit, food, foodstuffs, lodging, merchandise or other accommodations received from any one establishment is \$650 or more, for a category D felony as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

(b) Otherwise, for a misdemeanor.

3. Proof that lodging, food, foodstuffs, merchandise or other accommodations were obtained by false pretense, or by false or fictitious show or pretense of any baggage or other property, or that the person refused or willfully neglected to pay for the food, foodstuffs, lodging, merchandise or other accommodations, or that the person gave in payment for the food, foodstuffs, lodging, merchandise or other accommodations negotiable paper on which payment was refused, or that the person absconded without paying or offering to pay for the food, foodstuffs, lodging, merchandise or other accommodations, or that

the person surreptitiously removed or attempted to remove his or her baggage, is prima facie evidence of the fraudulent intent mentioned in this section.

4. This section does not apply where there has been an agreement in writing for delay in payment for a period to exceed 10 days.

[1:132:1939; 1931 NCL § 3333.01] + [1911 C&P § 461; A 1917, 35; 1931, 391; 1949, 109; 1943 NCL § 10414]—(NRS A 1967, 505; 1979, 1448; 1989, 1437; 1995, 1226; 2011, 169)