

CHAPTER 10.10

OFFENSES AGAINST PROPERTY

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10.10.010: Definitions: The following definitions are applicable in this chapter unless the context otherwise requires.

(1) "Appropriate Lost or Misdelivered Property or Services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property.

(2) "By Color or Aid of Deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(3) "Credit Card" means any instrument or device, whether incomplete, revoked, or expired, whether known as a credit card, credit plate, charge plate, courtesy card, or by any other name, issued with or without fee for the use of the cardholder in obtaining money, goods, services, or anything else of value, including satisfaction of a debt or the payment of a check drawn by a cardholder, either on credit or in consideration of an undertaking or guarantee by the issuer;

(4) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

- (c) Prevents another from acquiring information material to the disposition of the property involved; or
- (d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or
- (e) Promises performance which the actor does not intend to perform or knows will not be performed.
- (5) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;
- (6) "Obtain Control Over" in addition to its common meaning, means:
 - (a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or
 - (b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;
- (7) "Wrongfully Obtains" or " Exerts Unauthorized Control" means:
 - (a) To take the property or services of another; or
 - (b) Having any property or services in one's possession, custody or control as bailee, factor, pledgee, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody or control, to secrete, withhold, or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto;
- (8) "Owner" means a person, other than the actor, who has possession of, or any other interest in, the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;
- (9) "Property of another" means property in which the actor possesses anything less than exclusive ownership.
- (10) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;
- (11) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;
- (12) "Stolen" means obtained by theft, robbery, or extortion;
- (13) Value.
 - (a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.
 - (b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:
 - (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;
 - (ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon,

the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

- (iii) The value of any other instrument that creates, releases, discharges; or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
- (c) Whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved. For the purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.
- (d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved.
- (e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding \$250.00.

(14) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property;

(15) "Enter." The word "enter" when constituting an element or part of a crime shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(16) "Enters or Remains Unlawfully." A person "enters or remains unlawfully" in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner.

Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land. A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner.

(17) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer;

(18) "Computer Program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data; and

(19) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

(20) "Shopping Cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(21) "Parking Area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle. (Ord. 5235 Sec. 1, 2008: Ord. 5057 Sec. 12, 2004: Ord. 2934 Sec. 1, 1985: Ord. 2849 Sec. 1, 1984: Ord. 2841 Sec. 1, 1984: Ord. 2655 Sec. 2, 1982: Ord. 2401 Sec. 1, 1979: Ord. 2089 Sec. 2, 1977)

10.10.015: Theft - Definition, Defense:

(1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that the property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable. (Ord. 2401 Sec. 2, 1979)

10.10.020: Theft: A person is guilty of theft if he commits a theft of property or services. Theft is a gross misdemeanor. (Ord. 2401 Sec. 3 (part), 1979: Ord. 2089 Sec. 2 (part), 1977)

10.10.030: Unlawful Issuance of Checks or Drafts: Any person who, with intent to defraud, makes, or draws, or utters or delivers to another person any check, or draft, on a bank or other depository, for the payment of money, knowing at the time of such drawing or delivery, that he has not sufficient funds in, or credit with, said bank or other depository, to meet said check or draft, in full upon its presentation, shall be guilty of unlawful issuance of bank check. The word "credit," as used in this section, shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of the check or draft, and the uttering or delivering of such a check or draft to another person without such fund, or credit to meet the same, shall be prima facie evidence of an attempt to defraud. That a check or draft was returned to the payee by the bank or other depository indicating "account closed," "NSF," or other similar notation shall be prima facie evidence that the making, drawing, uttering, or delivering was made knowing there was not sufficient funds or credit to meet the check or draft in full upon presentment. Unlawful issuance of a bank check is a gross misdemeanor. (Ord. 3377 Sec. 1, 1992: Ord. 2641 Sec. 12, 1981: Ord. 2401 Sec. 3 (part), 1979: Ord. 2089 Sec. 2 (part), 1977)

10.10.040: Possession of Stolen Property: It is unlawful for any person to knowingly receive, retain, possess, conceal, or dispose of stolen property, knowing that it has been stolen, and to withhold or appropriate the same to the use of any person other than the true owner, or person entitled thereto. Possessing stolen property is a gross misdemeanor. (Ord. 2401 Sec. 3 (part), 1979; Ord. 2089 Sec. 2 (part), 1977)

10.10.050: Obscuring Identity of a Machine: A person is guilty of obscuring the identity of a machine, if he knowingly:

(1) Obscures the manufacturer's serial number, or any other distinguishing identification number or mark upon any vehicle, machine, engine, apparatus, appliance, or other device, with intent to render it unidentifiable; or

(2) Possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale, knowing that the serial number or other identification number or mark, has been obscured.

For the purpose of this section, "obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable. Obscuring the identity of a machine is a gross misdemeanor. (Ord. 2089 Sec. 2 (part), 1977)

10.10.060: Criminal Trespass in the First Degree: A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building. Criminal trespass in the first degree is a gross misdemeanor. (Ord. 2641 Sec. 13 (part), 1981; Ord. 2089 Sec. 2 (part), 1977)

10.10.070: Criminal Trespass in the Second Degree: A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree. Criminal trespass in the second degree is a misdemeanor. (Ord. 2641 Sec. 13 (part), 1981; Ord. 2089 Sec. 2 (part), 1977)

10.10.080: Criminal Trespass Defenses to Any Prosecution under Sections 10.10.060 and 10.10.070: It is a defense from prosecution under the provisions of Sections 10.10.060 and 10.10.070 that:

(1) A building involved in an offense under Section 10.10.060 was abandoned; or

(2) The premises were at the time open to members of the public, and the actor complied with all lawful conditions imposed on access to, or remaining in, the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain; or

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process. (Ord. 5057 Sec. 13, 2004; Ord. 2641 Sec. 13 (part), 1981; Ord. 2089 Sec. 2 (part), 1977)

10.10.090: Vehicle Prowling: A person is guilty of vehicle prowling if, with intent to commit a crime against a person or property therein, he enters, or remains unlawfully in, a vehicle. Vehicle prowling is a gross misdemeanor. (Ord. 2089 Sec. 2 (part), 1977)

10.10.110: Destruction or Removal of Property: It is unlawful for any person, willfully and without lawful authority, to destroy, mutilate, deface, break, impair, remove, interfere with, carry away, or in any manner injure any property of another, of any kind or character, public or private. Destruction or removal of property is a gross misdemeanor if the property damaged or removed is of value exceeding \$100.00. In any event, if the value of the property is less than \$100.00, a person convicted of violating the provisions of this section shall be guilty of a misdemeanor. (Ord. 5235 Sec. 2, 2008: Ord. 2401 Sec. 3 (part), 1979: Ord. 2089 Sec. 2 (part), 1977)

10.10.120: Injury or Removal of Street Signs: It is unlawful for any person, without proper authorization, willfully to alter, remove, deface, injure, knock down, or destroy any traffic sign, street sign, traffic-control device, luminaire, street light, or any part thereof. (Ord. 5057 Sec. 14, 2004: Ord. 2089 Sec. 2 (part), 1977)

10.10.130: Defacing or Removing Official Notices: It is unlawful for any person not an officer or employee of the City, to remove, destroy, tear down, or deface, either in whole or in part, or to mark, or write upon, change, obliterate, or mark, or in any manner alter or change, the writing, printing, or signature, or any part of the writing, printing, or signature, upon any bulletin, legal notice, or advertisement, posted or paper writing of the City lawfully posted or placed in the City. (Ord. 2089 Sec. 2 (part), 1977)

10.10.140: Reckless Burning: A person is guilty of reckless burning if he knowingly causes a fire or explosion, whether on his own property or that of another, and thereby recklessly places a building, or other structure, or any vehicle, railway car, aircraft, or watercraft, or any hay, grain, crop, or timber, whether cut or standing, in danger of destruction or damage. Reckless burning is a gross misdemeanor. (Ord. 2089 Sec. 2 (part), 1977)

10.10.150: Frauds on Innkeeper: Every person who shall obtain any food, lodging, accommodation or transportation at any hotel, restaurant, boarding house, or lodging house, or from any common carrier without paying therefor, with intent to defraud the proprietor, manager or operator thereof, or who shall obtain at any hotel, restaurant, boarding house, or lodging house, or from any common carrier, by color or aid of any false pretense, representation, token or writing, or who, after obtaining board, lodging, or accommodations or any transportation at any hotel, restaurant, boarding house or lodging house, or from any common carrier, shall abscond or surreptitiously remove his baggage therefrom without paying for such food, lodging, accommodation, or transportation shall be guilty of a gross misdemeanor. Frauds on Innkeeper is a gross misdemeanor if the fraud is valued at less than seventy-five dollars. (Ord. 5057 Sec. 15, 2004: Ord. 2401 Sec. 4, 1979)

10.10.160: Computer Trespass:

(1) A person is guilty of computer trespass if, without lawful authorization, he intentionally gains access to a computer system or electronic data base.

(2) A person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately.

- (3) Computer trespass is a gross misdemeanor. (Ord. 2849 Sec. 2, 1984)

10.10.170: Wrongful Removal or Possession of Shopping Carts:

(1) It is unlawful to do any of the following acts, if a shopping cart has a permanently affixed sign as provided in subsection (2) of this section:

- (a) To remove a shopping cart from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart; or
- (b) To be in possession of any shopping cart that has been removed from the parking area of a retail establishment with the intent to deprive the owner of the shopping cart the use of the cart.

(2) This section shall apply only when a shopping cart: (a) Has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; (b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; (c) notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and (d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

(3) Any person who violates any provision of this section is guilty of a misdemeanor. (Ord. 2934 Sec. 1, 1985)

10.10.190: Theft of Rental, Leased, or Lease-Purchased Property:

(1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented or leased to the person, is guilty of theft of rental, leased, or lease-purchased property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

- (a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, or lease-purchase agreement; or
- (b) That the renter or lessee presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or owner's agent made after the due date of the rental, lease, or lease-purchase period, mailed by certified or registered mail to the renter or lessee at:

- (a) The address the renter or lessee gave when the contract was made; or
- (b) The renter or lessee's last known address if later furnished in writing by the renter, lessee, or the agent of the renter or lessee.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, or lease-purchased property.

(5) Theft of rental, leased, or lease-purchased property is a gross misdemeanor if the rental, leased, or lease-purchased property is valued at less than two hundred fifty dollars.

(6) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, and to lease-purchase agreements as defined under RCW 63.19.010. This section does not apply to

rental or leasing of real property under the residential landlord-tenant act, Chapter 59.18 RCW. (Ord. 5057 Sec. 17, 2004: Ord. 2964 Sec. 1, 1986)

10.10.200: Depositing Trash in Charitable Receptacles:

(1) It is unlawful for any person to throw, drop, deposit, discard or otherwise dispose of any trash, including, but not limited to items that have deteriorated to the extent that they are no longer of monetary value or of use for the purpose they are intended, garbage, including any organic matter, or litter in or around a clearly marked receptacle provided by a charitable organization for donations of clothing, property or other things of monetary value to that organization.

(2) Charitable organizations must post a clearly visible notice on the donation receptacles warning of the existence and content of this section and the penalties for violation of its provisions, as well as a general identification of the items which are appropriate to be deposited in the receptacle.

(3) Any person violating the provisions of this section shall be guilty of a misdemeanor. (Ord. 5057 Sec. 18, 2004: Ord. 3109 Sec. 1, 1987)

10.10.210: Making or Having Burglary Tools:

(1) Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglary tools.

(2) Making or having burglary tools is a gross misdemeanor. (Ord. 5117 Sec. 1, 2005)