

## **SUBJECT**

Items Relating to Updates, Amendments, Deletions and Additions to Chapter 17 of the City Code.

- A. Second Reading of Ordinance No. 112, 2011, Amending Article V of Chapter 17 of the City Code Pertaining to Abandoned Refrigerators and Similar Items.
- B. Second Reading of Ordinance No. 113, 2011, Adding a Section to Article IV of Chapter 17 of the City Code Pertaining to the Violation of Court Orders.
- C. Second Reading of Ordinance No. 114, 2011, Amending Articles VII and VIII of Chapter 17 of the City Code Pertaining to Disorderly Conduct, Harassment and Public Indecency.
- D. Second Reading of Ordinance No. 115, 2011, Adding a New Section in Article VII of Chapter 17 of the City Code Pertaining to Graffiti Crimes.
- E. Second Reading of Ordinance No. 116, 2011, Amending Article VII of Chapter 17 of the City Code Pertaining to Loitering.
- F. Second Reading of Ordinance No. 117, 2011, Adding a New Section to Article VII of Chapter 17 of the City Code Pertaining to Staying on Medians Prohibited.
- G. Second Reading of Ordinance No. 118, 2011, Amending Article III of Chapter 17 of the City Code Pertaining to Jurisdictional Amount of Various Criminal Offenses.

## **EXECUTIVE SUMMARY**

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To maintain continuity with federal law, the revised statutes for the State of Colorado, and the needs of citizens of Fort Collins, the Fort Collins City Code must be regularly updated through amendments, deletions, and the creation of new ordinances. These Ordinances, unanimously adopted on First Reading on September 6, 2011, will allow law enforcement to more effectively and efficiently protect and serve the citizens of Fort Collins.

## **STAFF RECOMMENDATION**

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Staff recommends adoption of the Ordinance on Second Reading.

## **ATTACHMENTS**

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- 1. Copy of First Reading Agenda Item Summary - September 6, 2011 (w/o attachments)

**DATE:** September 6, 2011  
**STAFF:** Matt Johnson  
 Hal Dean

**AGENDA ITEM SUMMARY**  
 FORT COLLINS CITY COUNCIL

**17**

**SUBJECT**

Items Relating to Updates, Amendments, Deletions and Additions to Chapter 17 of the City Code.

- A. First Reading of Ordinance No. 112, 2011, Amending Article V of Chapter 17 of the City Code Pertaining to Abandoned Refrigerators and Similar Items.
- B. First Reading of Ordinance No. 113, 2011, Adding a Section to Article IV of Chapter 17 of the City Code Pertaining to the Violation of Court Orders.
- C. First Reading of Ordinance No. 114, 2011, Amending Articles VII and VIII of Chapter 17 of the City Code Pertaining to Disorderly Conduct, Harassment and Public Indecency.
- D. First Reading of Ordinance No. 115, 2011, Adding a New Section in Article VII of Chapter 17 of the City Code Pertaining to Graffiti Crimes.
- E. First Reading of Ordinance No. 116, 2011, Amending Article VII of Chapter 17 of the City Code Pertaining to Loitering.
- F. First Reading of Ordinance No. 117, 2011, Adding a New Section to Article VII of Chapter 17 of the City Code Pertaining to Staying on Medians Prohibited.
- G. First Reading of Ordinance No. 118, 2011, Amending Article III of Chapter 17 of the City Code Pertaining to Jurisdictional Amount of Various Criminal Offenses.

**EXECUTIVE SUMMARY**

To maintain continuity with federal law, the revised statutes for the State of Colorado, and the needs of citizens of Fort Collins, the Fort Collins City Code must be regularly updated through amendments, deletions, and the creation of new ordinances.

These amendments, deletions, and creations of several new ordinances will allow law enforcement to more effectively and efficiently protect and serve the citizens of Fort Collins.

**BACKGROUND / DISCUSSION**

Amendments to Chapter 17 of the City Code are proposed in the following areas to reflect current updates and/or conformity with state law:

- (1) theft
- (2) theft of rental property
- (3) concealment of goods
- (4) criminal mischief
- (5) abandoned refrigerators
- (6) disorderly conduct
- (7) harassment
- (8) public indecency.

The assault section is being amended to eliminate the requirement of bodily injury as an element of the offense to provide Fort Collins Police Services peace officers and other City staff a better fit for the types of assault charges that could be filed into Municipal Court.

The loitering section is being deleted to reflect current Colorado case law regarding the constitutionality of such an ordinance.

The following proposed sections were created to allow law enforcement to more effectively and efficiently protect and serve the citizens of Fort Collins:

- (1) violations of court orders
- (2) possession of graffiti materials by minors prohibited & possession of graffiti materials prohibited
- (3) staying on medians prohibited.

A new section, Violation of Court Orders, was created to provide criminal enforcement of valid court orders. This proposed section will support the location diversion program which is heavily used for problem solving efforts in downtown Fort Collins. The proposed sections regarding regulations of graffiti are intended to diminish incidents of graffiti in Fort Collins. The final proposed section regarding medians is designed to protect the citizens of Fort Collins by minimizing the safety risks to pedestrians and motorists involved with remaining in roadway medians for extended periods of time.

**STAFF RECOMMENDATION**

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Staff recommends adoption of these Ordinances on First Reading.

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ORDINANCE NO. 112, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLE V OF CHAPTER 17 OF THE CODE OF THE CITY OF  
FORT COLLINS PERTAINING TO ABANDONED REFRIGERATORS  
AND SIMILAR ITEMS

WHEREAS, the state statute regarding abandoned refrigerators is more inclusive and more enforceable than the City's current ordinance; and

WHEREAS, Fort Collins Police Services recommends amending the misdemeanor crime of abandoned refrigerators to be more consistent with state law and the City Council believes that it would be in the best interests of the City to approve such amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 17-81 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-81. Abandoned refrigerators and similar items.**

No person shall leave outside of any building or dwelling place or in any uninhabited building or any place accessible to children any chest, closet, piece of furniture, refrigerator, icebox, motor vehicle, or other article, having a compartment of a capacity of one and one-half cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside, or who, being the owner, lessee, or manager of such place, knowingly permits such abandoned or discarded article to remain in such condition.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

\_\_\_\_\_  
Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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Chief Deputy City Clerk

ORDINANCE NO. 113, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ADDING A NEW SECTION TO ARTICLE IV OF CHAPTER 17  
OF THE CODE OF THE CITY OF FORT COLLINS  
PERTAINING TO THE VIOLATION OF COURT ORDERS

WHEREAS, the Municipal Court has adopted the use of a sentencing provision for misdemeanor criminal violations that prohibits violators from frequenting the site of the commission of the crime (“Location Diversion”); and

WHEREAS, Fort Collins Police Services peace officers (“Peace Officers”) often find defendants in violation of a Location Diversion court order; and

WHEREAS, the Peace Officers have sometimes been challenged by violators when enforcing the Location Diversion Program; and

WHEREAS, the City Code currently has no provision dealing with violations of Municipal Court orders; and

WHEREAS, City staff has recommended adding a new section to the City Code that would provide for criminal enforcement of a valid court order; and

WHEREAS, this section will provide Peace Officers with the power to issue a citation for a violation of a court order, and will support the Location Diversion Program; and

WHEREAS, the City Council believes that it would be in the best interests of the City to approve this recommended amendment to the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Code of the City of Fort Collins is hereby amended by the addition of a new Section 17-69 which reads in its entirety as follows:

**Sec. 17-69. Violation of court orders.**

(a) It shall be unlawful for any person to violate a valid written order issued by any court of record within the United States of America, including Indian tribal courts, which requires a person to refrain from entering or remaining on certain premises or within any specified area after such person has been personally served with such order or has otherwise acquired from the court actual knowledge of the contents of any such order.

(b) Nothing in this Section shall be construed to alter or diminish the inherent authority of the Municipal Court to enforce its orders through civil or criminal contempt proceedings.

(c) No person charged with violation of an order pursuant to this Section shall be permitted, in the criminal action resulting from such charges, to collaterally attack the validity of the order which such person is accused of violating.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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Chief Deputy City Clerk

ORDINANCE NO. 114, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLES VII AND VIII OF CHAPTER 17 OF THE CODE OF  
THE CITY OF FORT COLLINS PERTAINING TO DISORDERLY CONDUCT,  
HARASSMENT AND PUBLIC INDECENCY

WHEREAS, the Colorado General Assembly has amended the state statutes regarding disorderly conduct, harassment, and public indecency; and

WHEREAS, Fort Collins Police Services recommends amending the misdemeanor crimes of disorderly conduct, harassment, and public indecency contained in the City Code to conform with state law; and

WHEREAS, the City Council believes that it would be in the best interests of the City to approve the changes to the City Code that have been recommended by Fort Collins Police Services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 17-124 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-124. Disorderly conduct.**

- (a) It is unlawful for any person to intentionally, knowingly or recklessly:
  - (1) Make a coarse and obviously offensive utterance, gesture or display in a public place when such utterance, gesture or display tends to incite an immediate breach of the peace; or
  - (2) Fight with another in a public place except in an amateur or professional contest of athletic skill; or
  - (3) Not being a peace officer, display a deadly weapon in a public place in a manner calculated to alarm.

Section 2. That Section 17-126 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-126. Harassment.**

- (a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:

- (1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact; or
- (2) In a public place directs obscene language or makes an obscene gesture to or at another person; or
- (3) Follows a person in or about a public place; or
- (4) Initiates communication with a person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone, computer, computer network, or computer system which is obscene; or
- (5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
- (6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
- (7) Repeatedly insults, taunts or challenges another in a manner likely to provoke a violent or disorderly response.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a blatantly offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Paragraph (a)(4) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.

Section 3. That Section 17-142 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-142. Public indecency.**

No person shall knowingly appear in any public place in a nude state or state of undress such that the genitals or buttocks of either sex or the breast or breasts of a female are exposed.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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Chief Deputy City Clerk

ORDINANCE NO. 115, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ADDING A NEW SECTION IN ARTICLE VII OF CHAPTER 17  
OF THE CODE OF THE CITY OF FORT COLLINS  
PERTAINING TO GRAFFITI CRIMES

WHEREAS, Fort Collins Police Services (“FCPS”) and City staff have observed an increase in the number of incidents of graffiti in the City over the past few years; and

WHEREAS, FCPS recommends adding the proposed new sections to the City Code regulating graffiti to address the increasing incidents of graffiti; and

WHEREAS, the City Council believes that it would be in the best interests of the City to approve the addition of these sections to the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Code of the City of Fort Collins is hereby amended by the addition of new Sections 17-135, 17-136, and 17-137, which read in their entirety as follows:

**Sec. 17-135. Definitions.**

The following words, terms and phrases, when used in this Division shall have the meanings ascribed to them in this Subsection:

*Broad tipped marker pen* shall mean a felt-tip marker, or similar implement containing a fluid which is not water soluble, with a tip that exceeds one-quarter (1/4) inch in width.

*Glass etching tool or instrument* shall mean any device or product used for engraving or creating a frosted effect on any surface or delivering a solution to any surface in order to create an image, or any container of such solution, including, but not limited to, glass etching creams or solutions.

*Paint pen* shall mean a tube, marker, or other pen-like instrument with a tip of one-quarter (1/4) inch in diameter or less that contains paint or a similar fluid and an internal paint agitator.

*Prohibited graffiti material* shall mean any can of spray paint, spray paint nozzle, broad tipped marker pen, paint pen, glass cutting tool, or glass etching tool or instrument.

*Spray paint* shall mean any aerosol container that is made or adapted for the purpose of applying paint or other substance capable of defacing property.

*Spray paint nozzle* shall mean a nozzle designed to deliver a spray of paint of a particular width or flow from a can of spray paint.

**Sec. 17-136. Possession of graffiti materials by minors prohibited.**

(a) It shall be unlawful for any minor, except a minor under the direct supervision of the minor's parent, legal guardian, school teacher, or a law enforcement officer in the performance of duty, to purchase, procure, or possess, or attempt to purchase, procure, or possess, any prohibited graffiti material.

(b) It shall be an affirmative defense to charges under this Section that the minor possessing the material was:

- (1) within his or her home;
- (2) at his or her place of employment; or
- (3) upon real property with permission from the owner, occupant, or person having lawful control of such property, to possess such materials.

**Sec. 17-137. Possession of graffiti materials prohibited.**

(a) It shall be unlawful for any person to possess graffiti materials.

(b) A person possesses graffiti materials when he or she possesses any paint, marking pen, materials, instrument or other article adapted, designed or commonly used for committing or facilitating the commission of an offense involving damaging, defacing, or destroying public or private property, and intends to use the thing possessed in the commission of such offense, or knows that some other person intends to use the thing possessed in the commission of such an offense.

(c) *Defacing* as used in subsection (b) above shall include, but not be limited to, the writing, painting, inscribing, drawing, scratching or scribbling upon any wall or surface owned, operated or maintained by any person or the city unless the city or the property owner grants written permission for such writing, painting, inscribing, drawing, scratching or scribbling.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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Chief Deputy City Clerk

ORDINANCE NO. 116, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLE VII OF CHAPTER 17 OF THE CODE  
OF THE CITY OF FORT COLLINS PERTAINING TO LOITERING

WHEREAS, in recent years, there have been several successful constitutional challenges to numerous Colorado cities' loitering ordinances; and

WHEREAS, Fort Collins Police Services recommends eliminating the misdemeanor crime of loitering to be consistent with Colorado case law and the City Council believes that it would be in the best interests of the City to approve such changes to the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Section 17-22 of the Code of the City of Fort Collins is hereby deleted in its entirety:

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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Chief Deputy City Clerk

ORDINANCE NO. 117, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ADDING A NEW SECTION TO ARTICLE VII OF CHAPTER 17  
OF THE CODE OF THE CITY OF FORT COLLINS  
PERTAINING TO STAYING ON MEDIANS PROHIBITED

WHEREAS, Fort Collins Police Services (“FCPS”) has encountered persons occupying the medians of streets within the City for extended periods of time; and

WHEREAS, FCPS is concerned with the safety risks to those individuals and others driving or using the streets, sidewalks, and crosswalks; and

WHEREAS, FCPS is recommending that a new section be added to the City Code prohibiting a person from remaining on medians for longer than is reasonably necessary to cross the street; and

WHEREAS, the proposed new section would protect the citizens of Fort Collins by minimizing the safety risks to pedestrians and motorists; and

WHEREAS, City Council believes it is in the best interests of the City to approve the addition of this new section to the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Code of the City of Fort Collins is hereby amended by the addition of a new section 17-122 which reads in its entirety as follows:

**Sec. 17-122. Staying on medians prohibited.**

(a) No person shall stand or be upon a median of any street for longer than is reasonably necessary to cross the street.

(b) For the purposes of this Section, *median* shall mean:

(1) The area of a street, generally in the middle, which separates traffic traveling in one direction from traffic traveling in another direction, or which, at intersections, separates traffic turning left from traffic proceeding straight. Such an area is physically defined by curbing, landscaping, or other physical obstacles to the area's use by motor vehicles, or by traffic control markings which prohibit use of a portion of the pavement of a street by motor vehicles other than to drive generally perpendicularly across the markings, or to wait there awaiting the opportunity to cross or merge with the opposing lanes of traffic (also known as painted medians, which are wider than a double yellow line); or

(2) The area of a street at an intersection between the streets and a right turn only lane, roughly triangular in shape, and separated from the motor vehicular traffic lanes by curbing, landscaping, or other physical obstacles to the area's use by motor vehicles (also known as a right turn island).

(c) This Section does not apply to medians which are thirty (30) or more feet wide or to persons maintaining or working on the median for the government which owns the underlying right-of-way or for a public utility.

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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Chief Deputy City Clerk

ORDINANCE NO. 118, 2011  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING ARTICLE III OF CHAPTER 17 OF THE CODE OF THE CITY OF  
FORT COLLINS PERTAINING TO JURISDICTIONAL AMOUNT  
OF VARIOUS CRIMINAL OFFENSES

WHEREAS, the Colorado General Assembly has amended state law to change the jurisdictional amount for the misdemeanor crimes of theft, theft of rental property, concealment of goods, and criminal mischief from \$500 to \$1,000; and

WHEREAS, the City Code currently establishes the jurisdictional amount for the misdemeanor crimes of theft, theft of rental property, concealment of goods, and criminal mischief at \$500; and

WHEREAS, Fort Collins Police Services recommends raising the jurisdictional amounts of these local offenses to \$1,000 to be consistent with state law; and

WHEREAS, the City Council believes that it would be in the best interests of the City to approve the changes to the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That Section 17-36 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-36. Theft.**

No person shall knowingly obtain or exercise control over anything of value of less than one thousand dollars (\$1,000.) of another without authorization or by threat or deception when such person:

- (1) Intends to deprive the other person permanently of the use or benefit of the thing of value; or
- (2) Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit; or
- (3) Uses, conceals or abandons the thing of value intending that such use, concealment or abandonment will deprive the other person permanently of its use or benefit; or
- (4) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person.

Section 2. That Section 17-37 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-37. Theft of rental property.**

No person shall:

- (1) Obtain the temporary use of personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without the consent of the person providing the personal property; or
- (2) Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fail to reveal the whereabouts of or to return the property to the owner thereof or a representative of the owner or to the person from whom the property was received within seventy-two (72) hours after the time at which the person agreed to return it where the value of the thing involved is less than one thousand dollars (\$1,000.).

Section 3. That Section 17-38 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-38. Concealment of goods.**

If any person willfully conceals unpurchased goods, wares or merchandise valued at less than one thousand dollars (\$1,000.) owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his or her own person or otherwise and whether on or off the premises of the store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft.

Section 4. That Section 17-39 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-39. Criminal mischief.**

No person shall knowingly injure, damage or destroy the real or personal property of one (1) or more other persons in the course of a single criminal episode where the aggregate damage to the real or personal property is less than one thousand dollars (\$1,000.).

Introduced, considered favorably on first reading, and ordered published this 6th day of September, A.D. 2011, and to be presented for final passage on the 20th day of September, A.D. 2011.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 20th day of September, A.D. 2011.

\_\_\_\_\_  
Mayor

ATTEST:

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Chief Deputy City Clerk