

COPY

MITCHELL COUNTY
ORDINANCE NO. 23
EFFECTIVE 2/20/02
AN ORDINANCE PROHIBITING THEFT & FRAUDULENT PRACTICES

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF MITCHELL COUNTY, IOWA:

Purpose: It is the purpose and intent of the Board of Supervisors to protect the citizens of Mitchell County from the theft of their property.

SHORT TITLE & DEFINITIONS

23.1.01 Short Title. This ordinance shall be known and may be cited and referred to as the "Theft & Fraudulent Practices Ordinance" to the same effect as if full title was stated.

23.1.01.1 All references in Section 1.04 are to references of the Iowa Code and this ordinance hereby adopts by reference said Iowa Code provisions as may be applicable.

23.1.02 Theft Defined. A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person. Failure by a bailee or lessee of personal property to return the property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.

3. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another, by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.

4. Exercises control over stolen property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer. The fact that the person is found in possession of property which has been stolen from two or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such

property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court or jury may infer that the person knew or believed that the property had been stolen.

5. Takes, destroys, conceals or disposes of property in which someone else has a security interest, with intent to defraud the secured party.

6. Makes, utters, draws, delivers, or gives any check, share draft, draft, or written order on any bank, credit union, person, or corporation, and obtains property, the use of property, including rental property, or service in exchange for such instrument, if the person knows that such check, share draft, draft, or written order will not be paid when presented.

Whenever the drawee of such instrument has refused payment because of insufficient funds, and the maker has not paid the holder of the instrument the amount due thereon within ten days of the maker's receipt of notice from the holder that payment has been refused by the drawee, the court or jury may infer from such facts that the maker knew that the instrument would not be paid on presentation. Notice of refusal of payment shall be by certified mail, or by personal service in the manner prescribed for serving original notices.

Whenever the drawee of such instrument has refused payment because the maker has no account with the drawee, the court or jury may infer from such fact that the maker knew that the instrument would not be paid on presentation.

7. Obtains gas, electricity or water from a public utility or obtains cable television or telephone service from an unauthorized connection to the supply or service line or by intentionally altering, adjusting, removing or tampering with the metering or service device so as to cause inaccurate readings.

8. Knowingly and without authorization accesses or causes to be accessed a computer, computer system, or computer network, or any part thereof, for the purpose of obtaining computer services, information, or property or knowingly and without authorization and with the intent to permanently deprive the owner of possession, takes, transfers, conceals, or retains possession of a computer, computer system, or computer network or any computer software or computer program, or computer data contained in a computer, computer system, or computer network.

9. a. Obtains the temporary use of video rental property with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner.

b. Lawfully obtains the temporary use of video rental property and fails to return the video rental property by the agreed time with the intent to deprive the owner of the use and possession of the video rental property without the consent of the owner. The aggregate value of the video rental property involved shall be the original retail value of the video rental property.

10. Any act that is declared to be theft by any provision of the Code.

23.1.03 Degrees of Theft.

1. The theft of property not exceeding two hundred dollars in value is theft in the fifth degree. Theft in the fifth degree constitutes a violation of this ordinance.

23.1.04 Fraudulent practices defined. A person who does any of the following acts is guilty of a fraudulent practice:

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.

2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.

3. Knowingly executes or tenders a false certification under penalty of perjury, false affidavit, or false certificate, if the certification, affidavit, or certificate is required by law or given in support of a claim for compensation, indemnification, restitution, or other payment.

4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.

5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.

7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin-operated device or vending machine, with the intent that such token or device may be so used, or with the representation that they can be so used; provided, that the owner or operator of any coin-operated device or vending machine may sell slugs or tokens for use in the person's own devices.

8. Manufactures or possesses any false or counterfeit label, with the intent that it be placed on merchandise to falsely identify its origin or quality, or who sells any such false or counterfeit label with the representation that it may be so used.

9. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.

10. Does any act expressly declared to be a fraudulent practice by any other section of the

Code.

11. Removes, defaces, covers, alters, or destroys any component part number as defined in section 321.1, vehicle identification number as defined in section 321.1, or product identification number as defined in section 321.1, for the purpose of concealing or misrepresenting the identity or year of manufacture of the component part or vehicle.

12. Knowingly transfers or assigns a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6, or accepts a transfer of or an assignment of a legal or equitable interest in property, as defined in section 702.14, for less than fair consideration, with the intent of enabling the party transferring the property to obtain public assistance under chapters 16, 35B, 35D, and 347B, or Title VI, subtitles 2 through 6. A transfer or assignment of property for less than fair consideration within one year prior to an application for public assistance benefits shall be evidence of intent to transfer or assign the property in order to obtain public assistance for which a person is not eligible by reason of the amount of the person's assets. If a person is found guilty of a fraudulent practice in the transfer or assignment of property under this subsection the maximum sentence shall be the penalty established for a serious misdemeanor and sections 714.9, 714.10 and 714.11 shall not apply.

13. Fraudulent practices in connection with targeted small business programs.

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a woman or minority person primarily for the purpose of obtaining benefits under targeted small business programs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a targeted small business for the purpose of transferring the contract to another for a percentage if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifying information on an application for the purpose of obtaining benefits under targeted small business programs.

A violation under this subsection is grounds for decertification of the targeted small business connected with the violation. Decertification shall be in addition to any penalty otherwise authorized by this section.

14. Makes payment pursuant to an agreement with a dealer or market agency for livestock held by the dealer or market agency by use of a financial instrument which is a check, share draft, draft, or written order on any financial institution, as defined in section 203C.1, if after seven days from the date that possession of the livestock is transferred pursuant to the purchase, the financial institution refuses payment on the instrument because of insufficient funds in the maker's account.

This subsection is not applicable if the maker pays the holder of the instrument the amount

due on the instrument within one business day from a receipt of notice by certified mail from the holder that payment has been refused by the financial institution.

As used in this subsection, "dealer" means a person engaged in the business of buying or selling livestock, either on the person's own account, or as an employee or agent of a vendor or purchaser. "Market agency" means a person engaged in the business of buying or selling livestock on a commission basis.

15. Obtains or attempts to obtain the transfer of possession, control, or ownership, of the property of another by deception through communications conducted primarily by telephone and involving direct or implied claims that the other person contacted has won or is about to win a prize, or involving direct or implied claims that the other person contacted may be able to recover any losses suffered by such other person in connection with a prize promotion.

16. Knowingly provides false information to the treasurer of state when claiming, pursuant to section 556.19, an interest in unclaimed property held by the state, or knowingly provides false information to a person or fails to disclose the nature, value, and location of unclaimed property prior to entering into a contract to receive compensation to recover or assist in the recovery of property reported as unclaimed pursuant to section 556.11.

17. A packer who includes a confidentiality provision in a contract with a livestock seller in violation of section 202A.4.

18. Manufactures, creates, reproduces, alters, possesses, uses, transfers, or otherwise knowingly contributes to the production or use of a fraudulent retail sales receipt or universal price code label with intent to defraud another person engaged in the business of retailing.
For purposes of this subsection:

a. "Retail sales receipt" means a document intended to evidence payment for goods or services.

b. "Universal price code label" means the unique ten-digit bar code placed on the packaging of an item that may be used for purposes including but not limited to tracking inventory, maintaining price information in a computerized database, and serving as proof of purchase of a particular item.

19. A contractor who enforces a provision in a production contract that provides that information contained in the production contract is confidential as provided in section 202.3.

23.1.05 Fraudulent practice in the fifth degree. Fraudulent practice in the fifth degree is a fraudulent practice where the amount of money or value of property or services involved does not exceed two hundred dollars. Fraudulent practice in the fifth degree constitutes a violation of this ordinance.

VALIDITY

23.3.01 Validity. Should any section, sentence, clause or provision of this Ordinance be declared by a court to be invalid, the same shall not affect the validity of this Ordinance as a whole or the remaining portions of this Ordinance.

PENALTIES

23.4.01 Penalties. Any person, firm, corporation, partnership or any legal entity who violates this ordinance shall, upon conviction, be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than thirty days in lieu of a fine or in addition to a fine.

ENACTMENT AND EFFECTIVE DATE

This enactment shall be in full force and effect from and after its passage and adoption as provided by law.

Passed this _____ day of _____, 2001.

Chairman, Mitchell County Board of Supervisors

ATTEST:

Lowell Tesch, Mitchell County Auditor

NOTICE OF PUBLIC HEARING

The Mitchell County Board of Supervisors will hold a public hearing at _____ .M. on _____, _____, 2001, in the Board of Supervisor's room at the Courthouse in Osage, Iowa. The purpose of this hearing is to consider Mitchell County Ordinance No. _____, an Ordinance Prohibiting Theft in Mitchell County, Iowa. This ordinance will prohibit theft in Mitchell County. A copy of the proposed ordinance is available at the office of the Auditor for public inspection and copies may be obtained at the Auditor's office. Anyone wishing to speak in support or opposition of this ordinance should be present at this hearing.