

Item #7:
Ordinance Amending Code Re: Retail Theft

VILLAGE OF LONG GROVE

ORDINANCE NO. 2011-O-___

**AN ORDINANCE ADDING SECTION 10-1-8 OF THE LONG GROVE
VILLAGE CODE RELATING RETAIL THEFT**

Adopted by the
President and Board of Trustees
Of the Village of Long Grove
this 12th Day of April, 2011

Published in pamphlet form by direction
and authority of the Village of Long Grove
Lake County, Illinois
this 13th day of April, 2011

**VILLAGE OF LONG GROVE
ORDINANCE NO. 2011-O- __**

**AN ORDINANCE ADDING SECTION 10-1-8 OF THE LONG GROVE
VILLAGE CODE RELATING TO RETAIL THEFT**

WHEREAS, recent retail development in the Village of Long Grove has caused an increase in shoplifting and other retail theft; and

WHEREAS, that the substantial burden placed upon the economy of the Village of Long Grove resulting from the rising incidence of retail theft is a matter of grave concern to the businesses and residents of the Village who have a right to be protected in their health, safety and welfare from the effects of this crime; and

WHEREAS, certain minor retail theft cases are a source of disruption and disorder within the Village, but they do not warrant consideration of felony charges and can be handled more efficiently as ordinance violations; and

WHEREAS, the Village of Long Grove does not currently have an ordinance which prohibits retail theft; and

WHEREAS, pursuant to Section 11-5-2 of the Illinois Municipal Code, 65 ILCS 5/11-5-2, the Village is authorized to establish regulations to prevent or prohibit conduct that will cause disruption and disorder; and

WHEREAS, pursuant to Section 1-2-1.1 of the Illinois Municipal Code, 65 ILCS 5/1-2-1.1, the Village is authorized to pass ordinances not inconsistent with the criminal laws of the State that establish certain offenses as local ordinance violations; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interests of the Village to amend its Police Regulations Ordinance to create an offense of retail theft;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: Recitals. The foregoing recitals are hereby incorporated herein as findings of the Village Board of Trustees.

Section 2: Adding Section 10-1-8 of the Village Code. Chapter 1, entitled "General Offenses," of Title 10, entitled "Police Regulations," of the Long Grove Village Code is hereby amended by adding a new Section 10-1-8 to be entitled "Retail Theft," which new Section 10-1-8 shall hereafter be and read as follows:

Section 10-1-8 RETAIL THEFT

Section 10-1-8-1 Definitions:

1. "Conceal" merchandise means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.
2. "Full retail value" means the merchant's stated or advertised price of the merchandise. "Full retail value" includes the aggregate value of property obtained from retail thefts committed by the same person as part of a continuing course of conduct from one or more mercantile establishments in a single transaction or in separate transactions over a period of one year.
3. "Merchandise" means any item of tangible personal property.
4. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator.
5. "Minor" means a person who is less than 19 years of age, is unemancipated and resides with his parents or legal guardian.
6. "Person" means any natural person or individual.
7. "Peace officer" has the meaning ascribed to that term in Section 2-13 of the Illinois Criminal Code.
8. "Premises of a Retail Mercantile Establishment" includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

9. "Retail Mercantile Establishment" means any place where merchandise is displayed, held, stored or offered for sale to the public.
10. "Shopping Cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.
11. "Under-ring" means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.
12. "Theft detection shielding device" means any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.
13. "Theft detection device remover" means any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.
14. "Continuing course of conduct" means a series of acts, and the accompanying mental state necessary for the crime in question, irrespective of whether the series of acts are continuous or intermittent.

Section 10-1-8-2 Offense of Retail Theft.

A person commits the offense of retail theft when he or she knowingly:

(a) Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise; or

(b) Alters, transfers, or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise; or

(c) Transfers any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise; or

(d) Under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or

(e) Removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the possession, use or benefit of such cart; or

(f) Represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false, and conveys or attempts to convey that property to a merchant who is the owner of the property in exchange for money, merchandise credit or other property of the merchant; or

(g) Uses or possesses any theft detection shielding device or theft detection device remover with the intention of using such device to deprive the merchant permanently of the possession, use or benefit of any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment without paying the full retail value of such merchandise; or

(h) Obtains or exerts unauthorized control over property of the owner and thereby intends to deprive the owner permanently of the use or benefit of the property when a lessee of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within 10 days after written demand from the owner for its return. A notice in writing, given after the expiration of the leasing agreement, by registered mail, to the lessee at the address given by the lessee and shown on the leasing agreement shall constitute proper demand.

Section 10-1-8-3 Theft by Emergency Exit.

A person commits the offense of theft by emergency exit when he or she commits a retail theft as defined in Section 16A-3 of the Illinois Criminal Code [720 ILCS 5/16A-3] and to facilitate the theft he or she leaves the retail mercantile establishment by use of a designated emergency exit.

Section 10-1-8-4 Presumptions.

If any person:

(a) conceals upon his or her person or among his or her belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(b) removes that merchandise beyond the last known station for receiving payments for that merchandise in that retail mercantile establishment such person shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

Section 10-1-8-5 Detention.

Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) To request identification;

b) To verify such identification;

(c) To make reasonable inquiry as to whether such person has in his possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;

(d) To inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer;

(e) In the case of a minor, to immediately make a reasonable attempt to inform the parents, guardian or other private person interested in the welfare of that minor and, at the merchant's discretion, a peace officer, of this detention and to surrender custody of such minor to such person.

A merchant may make a detention as permitted herein off the premises of a retail mercantile establishment only if such detention is pursuant to an immediate pursuit of such person.

A merchant shall be deemed to have reasonable grounds to make a detention for the purposes of this Section if the merchant detains a person because such person has in his possession either a theft detection shielding device or a theft detection device remover.

Section 10-1-8-6 Affirmative Defense.

A detention as permitted in this Article does not constitute an arrest or an unlawful restraint, as defined in Section 10-3 of the Illinois Criminal Code, nor shall it render the merchant liable to the person so detained.

Section 10-1-8-7 Fines and Penalties.

Any violation under this Section 10-1-8 shall be subject to a fine of not more than \$750.00 per offense, or incarceration in a penal institution other than a penitentiary for a period not to exceed six months, or both. Notwithstanding the foregoing, A violation of Subsection 10-1-8-1(g) shall be a Class A misdemeanor for a first offense and a Class 4 felony for a second or subsequent offense. Nothing in this Section 10-1-8 shall limit the Village's authority to re-classify any offense under this Section to an offense under the Illinois Criminal Code.

Section 3: Effective Date.

This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law.

PASSED THIS 12TH DAY APRIL, 2011

AYES: ()
NAYS: ()
ABSENT: ()

APPROVED THIS 12TH DAY OF APRIL, 2011

Village President

ATTEST:

Village Clerk