City of Birmingham
A Walkable Community

MEMORANDUM

Police Department

DATE: **March 21, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Mark H. Clemence, Police Chief**

SUBJECT: **Amendments to Amend Part II of the City Code, Chapter 74, Offenses, Article IV – Offenses Against Property, adding the following Sections: 74-101, 74-101(A), 74-102, 74-103, 74-103(A), 74-104, 74-104(A), 74-105, 74-105(A), 74-106, 74-106(A), 74-107, 74-107(A), 74-108 and 74-08(A)**

In the past six years, identity thieves have stolen over $107 billion dollars from U.S. consumers. In the past year alone, the number of consumers that have been victimized by identity theft grew by 2.3 million to a total of 15.4 million. In 2015, the United States introduced microchip equipped credit cards, which make the cards extremely difficult to counterfeit. As a result, identity thieves have focused their attention on new account frauds where the thief opens a credit card or other financial account using a victim's name or other stolen personal information (i.e. social security number, operator's license number, home address, e-mail, cell phone).
These trends were discussed with the City Attorney to address appropriate enforcement response. The City Attorney suggested adding seven new amendments to Part II of the City Code, Chapter 74, Offenses, Article IV –Offenses Against Property for crimes and one new amendment to Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property for definitions. These new local ordinance amendments mirror state law, but all carry a penalty of being a misdemeanor punishable by imprisonment for not more than ninety-three (93) days and/or by a fine of not more than five hundred dollars ($500.00).

I am recommending the following ordinances be adopted by the City Commission to amend Part II of the City Code, Chapter 74, Offenses, Article IV – Offenses Against Property:

1. Section 74-101: Illegal Use of State Personal Identification Card and Section 74-101(A) - Penalty for Violation of Section 74-101.
2. Section 74-102: Definitions
3. Section 74-103: Stealing, Taking Title, or Removing Financial Transaction Device; Possession of Fraudulent or Altered Financial Transaction Device and Section 74-103 (A) – Penalty for Violation of Section 74-103.
4. Section 74-104: Use of Revoked or Cancelled Financial Transaction Device with Intent to Defraud and Section 74-104(A) – Penalty for Violation of Section 74-104
5. Section 74-105: Sales to or Services Performed for Violator and Section 74-105(A) – Penalty for Violation of Section 74-105.
6. Section 74-106: Causing Device Holder to be Charged or Overcharged and Section 74-106(A) – Penalty for Violation of Section 74-106.

7. Section 74-107: False Statement of Identity for Purpose of Procuring Issuance of Financial Transaction Device and Section 74-107(A) – Penalty for Violation of Section 74-107.
8. Section 74-108: Fraudulent Use of financial Transaction Device to Withdraw or Transfer Funds in Violation of Contractual Limitations and Section 74-108(A) – Penalty for Violation of Section 74-108.

All of the above eight ordinance amendments were drafted by the City Attorney. Each amendment can be individually viewed in the attachment to this memorandum (see attached).

SUGGESTED RESOLUTION:
That the City Commission amend Part II of the City Code, Chapter 74, Offenses, Article IV, Offenses Against Property to include the following eight new ordinances:

Section 74-101: Illegal Use of State Personal Identification Card and Section 74-101(A) – Penalty for Violation of Section 74-101

AND

Section 74-102: Definitions

AND

Section 74-103: Stealing, Taking Title, or Removing Financial Transaction Device; Possession of Fraudulent or Altered Financial Transaction Device and Section 74-103(A) – Penalty for Violation of Section 74-103

AND

Section 74-104: Use of Revoked or Cancelled Financial Transaction Device with Intent to Defraud and Section 74-104(A) – Penalty for Violation of Section 74-104

AND

Section 74-105: Sales to or Services Performed for Violator and Section 74-105(A) – Penalty for Violation of Section 74-105

AND

Section 74-106: Causing Device Holder to be Charged or Overcharged and Section 74-106(A) – Penalty for Violation of Section 74-106

AND

Section 74-107: False Statement of Identity for Purpose of Procuring Issuance of Financial Transaction Device and Section 74-107(A) – Penalty for Violation of Section 74-107

AND

Section 74-108: Fraudulent Use of financial Transaction Device to Withdraw or Transfer Funds in Violation of Contractual Limitations and Section 74-108(A) – Penalty for Violation of Section 74-108

And to authorize the Mayor and the City Clerk to sign the ordinance amendments on behalf of the City.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-101 ILLEGAL USE OF STATE PERSONAL IDENTIFICATION CARD AND SECTION 74-101(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-101 Illegal Use of State Personal Identification Card, and Section 74-101(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-101. – *Illegal Use of State Personal Identification Card.*

(1) No person shall intentionally reproduce, alter, counterfeit, forge, or duplicate an official state personal identification card photograph, the negative of the photograph, an official state personal identification card image, an official state personal identification card, or the electronic data contained on an official state personal identification card or a part of an official state personal identification card or who uses an official state personal identification card, image, or photograph that has been reproduced, altered, counterfeited, forged, or duplicated.

(2) No person shall possess with the intent to deliver to another a reproduced, altered, counterfeited, forged, or duplicated official state personal identification card photograph, negative of the photograph, official state personal identification card image, official state personal identification card, or electronic data contained on an official state personal identification card or part of an official state personal identification card.

(3) No person shall possess an altered, counterfeited, forged, or duplicated official state personal identification card photograph, negative of the photograph, official state personal identification card image, official state personal identification card, or electronic data contained on an official state personal identification card or part of an official state personal identification card.

(4) No person shall steal, or without the cardholder's permission, knowingly take or knowingly remove an official state personal identification card from the person or

possession of another. A person shall not use an official state personal identification card that is stolen or knowingly removed from the person or possession of another.

Sec. 74-101(A). – *Penalty for Violation of Section 74-101.*

Any person who violates 74-101 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days and/or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

_____
Mark Nickita, Mayor

_____
Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2017 and that a summary was published _____, 2017.

_____
Cheryl Arft, Acting City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-102 DEFINITIONS.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-102 Definitions, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-102. – *Definitions*

As used in this section.

(a) "Credit card" means either of the following:

(i) Any instrument or device which is sold, issued, or otherwise distributed by a business organization or financial institution for the use of the person or organization identified on the instrument or device for obtaining goods, property, services, or anything of value on credit.

(ii) An instrument or device which is issued or otherwise distributed by an organization for the use of the person identified on the instrument or device for obtaining health care services or goods or reimbursement or payment for health care services or goods. As used in this subparagraph, "organization" means any of the following:

(A) A dental care corporation incorporated under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws.

(B) A health care corporation incorporated under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

(C) A health maintenance organization licensed under article 17 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.20101 to 333.22181 of the Michigan Compiled Laws.

(D) An insurer as defined in section 106 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.106 of the Michigan Compiled Laws.

(E) A third party administrator operating under a certificate of authority issued by the commissioner pursuant to the third party administrator act, Act No. 218 of the Public Acts of 1984, being sections 550.901 to 550.962 of the Michigan Compiled Laws.

(b) "Deposit account" includes share, deposit, member, and savings accounts of financial institutions.

(c) "Credit account" means the account through which a business organization or financial institution allows a person or organization to obtain goods, property, services, or any other thing of value on credit.

(d) "Device holder" means either of the following:

(i) The person or organization who requests a financial transaction device and to whom or for whose benefit a financial transaction device is subsequently issued.

(ii) The person or organization to whom a financial transaction device was issued and who used or accepted a financial transaction device, whether the issuance of the financial transaction device was requested or not.

(e) "Financial institution" means a bank, savings and loan association, or credit union, and includes a corporation wholly owned by a financial institution or by the holding company parent of a financial institution.

(f) "Financial transaction device" means any of the following:

(i) An electronic funds transfer card.

(ii) A credit card.

(iii) A debit card.

(iv) A point-of-sale card.

(v) Any instrument, device, card, plate, code, account number, personal identification number, or a record or copy of a code, account number, or personal identification number or other means of access to a credit account or deposit account, or a driver's license or state identification card used to access a proprietary account, other than access originated solely by a paper instrument, that can be used alone or in conjunction with another access device, for any of the following purposes:

(A) Obtaining money, cash refund or credit account, credit, goods, services, or any other thing of value.

(B) Certifying or guaranteeing to a person or business the availability to the device holder of funds on deposit to honor a draft or check payable to the order of that person or business.

(C) Providing the device holder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account, or making an electronic funds transfer as defined in section 3(4) of Act No. 322 of the Public Acts of 1978, being section 488.3 of the Michigan Compiled Laws.

(g) "Proprietary account" means the account which is maintained by a business organization in the name of an individual person or organization and through which the business organization allows the person or organization to obtain goods, property, services, or any other thing of value on credit.

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

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Mark Nickita, Mayor

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Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2017 and that a summary was published _____, 2017.

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Cheryl Arft, Acting City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-103 STEALING, TAKING TITLE, OR REMOVING FINANCIAL TRANSACTION DEVICE; POSSESSION OF FRAUDULENT OR ALTERED FINANCIAL TRANSACTION DEVICE AND SECTION 74-103(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-103 Stealing, Taking Title, or Removing Financial Transaction Device; Possession of Fraudulent or Altered Financial Transaction Device and Section 74-103(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-103. – *Stealing, Taking Title, or Removing Financial Transaction Device; Possession of Fraudulent or Altered Financial Transaction Device.*

(1) No person shall knowingly take, or knowingly remove a financial transaction device from the person or possession of a device holder, nor shall knowingly retain, possess, secrete, or use a financial transaction device without the consent of the device holder.

(2) No person shall knowingly possess a fraudulent or altered financial transaction device.

(3) No person shall have in his or her possession, or under his or her control, or receive from another person a financial transaction device with the intent to use, deliver, circulate, or sell the financial transaction device, or to permit, cause, or procure the financial transaction device to be used, delivered, circulated, or sold, or knowingly possess, control, receive, use, deliver, circulate, or sell without the consent of the device holder.

(4) No person shall deliver, circulate, or sell a financial transaction device which was obtained or held by that person under circumstances proscribed under section (1), (2), or (3), or use, permit, cause, or procure the financial transaction device to be used, delivered, circulated, or sold, knowing the device to have been obtained or held under circumstances proscribed under section (1), (2) or (3).

(5) No person shall, with intent to defraud, forge, materially alter, simulate, or counterfeit a financial transaction device.

Sec. 74-103(A). – *Penalty for Violation of Section 74-103.*

Any person who violates 74-103 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

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Mark Nickita, Mayor

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Cheryl Arft, Acting City Clerk

I, Cheryl Arft, Acting City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2017 and that a summary was published _____, 2017.

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Cheryl Arft, Acting City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-104 USE OF REVOKED OR CANCELLED FINANCIAL TRANSACTION DEVICE WITH INTENT TO DEFRAUD AND SECTION 74-104(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-104 Use of revoked or cancelled financial transaction device with intent to defraud and Section 74-104(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-104. – *Use of revoked or cancelled financial transaction device with intent to defraud.*

No person shall, for the purpose of obtaining goods, property, services, or anything of value, knowingly and with intent to defraud use 1 or more financial transaction device that has been revoked or canceled by the issuer of the device or devices, as distinguished from expired, and has received notice of the revocation or cancellation.

Sec. 74-104(A). – *Penalty for Violation of Section 74-104.*

Any person who violates 74-104 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

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Mark Nickita, Mayor

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CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-105 SALES TO OR SERVICES PERFORMED FOR VIOLATORS AND SECTION 74-105(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-105 Sales to or services performed for violators and Section 74-105(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-105. – *Sales to or services performed for violators.*

No person shall sell or deliver goods or property or anything of value, or render any service to any other person knowing that such other person has committed or is committing any act prohibited by this section.

Sec. 74-105(A). – *Penalty for Violation of Section 74-105.*

Any person who violates 74-105 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

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Cheryl Arft, Acting City Clerk

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CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-106 CAUSING DEVICE HOLDER TO BE CHARGED OR OVERCHARGED AND SECTION 74-106(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-106 Causing device holder to be charged or overcharged and Section 74-106(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-106. – *Causing device holder to be charged or overcharged.*

No person to whom a device holder presents a financial transaction device for the purpose of obtaining goods, property, services, or anything of value on credit, or for any purpose for which the device may be used, who, by using the financial transaction device, by forging or aiding in the forgery of the device holder's signature, or by filling out or completing an application or form to be furnished to the issuer of the financial transaction device, shall cause the device holder to be charged for a purchase or other transaction that was not authorized by the device holder, to be overcharged for a purchase or other transaction that was authorized by the device holder, or to otherwise incur a financial loss.

Sec. 74-106(A). – *Penalty for Violation of Section 74-106.*

Any person who violates 74-106 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

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Mark Nickita, Mayor

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Cheryl Arft, Acting City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-107 FALSE STATEMENT OF IDENTITY FOR PURPOSE OF PROCURING ISSUANCE OF FINANCIAL TRANSACTION DEVICE AND SECTION 74-107(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-107 False statement of identity for purpose of procuring issuance of financial transaction device and Section 74-107(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-107. – *False statement of identity for purpose of procuring issuance of financial transaction device.*

No person shall knowingly and with the intent to defraud, make or cause to be made, directly or indirectly, a false statement in writing regarding his or her identity or that of any other person for the purpose of procuring the issuance of a financial transaction device.

Sec. 74-107(A). – *Penalty for Violation of Section 74-107.*

Any person who violates 74-107 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

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Mark Nickita, Mayor

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Cheryl Arft, Acting City Clerk

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CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE IV – OFFENSES AGAINST PROPERTY, DIVISION 2 THEFT, TO ADD SECTION 74-108 FRAUDULENT USE OF FINANCIAL TRANSACTION DEVICE TO WITHDRAW OR TRANSFER FUNDS IN VIOLATION OF CONTRACTUAL LIMITATIONS AND 74-108(A) PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article IV – Offenses Against Property, Division 2 Theft, shall be amended to add Section 74-108 Fraudulent Use of Financial Transaction Device to Withdraw or Transfer Funds in Violation of Contractual Limitations and Section 74-108(A) Penalty, as follows:

ARTICLE IV – OFFENSES AGAINST PROPERTY

DIVISION 2. – THEFT

Sec. 74-108. – *Fraudulent Use of Financial Transaction Device to Withdraw or Transfer Funds in Violation of Contractual Limitations.*

No person shall knowingly and with the intent to defraud, use a financial transaction device to withdraw or transfer funds from a deposit account in violation of the contractual limitations imposed on the amount or frequency of withdrawals or transfers or in an amount exceeding the funds then on deposit in the account.

Sec. 74-108(A). – *Penalty for Violation of Section 74-108.*

Any person who violates 74-108 is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or by a fine of not more than five hundred dollars ($500.00).

All other Sections of Chapter 74, Offenses, Article IV. Offenses Against Property shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

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Mark Nickita, Mayor

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