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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4988

AN ORDINANCE regarding the Bellevue Criminal Code; amending Bellevue City Code 10A.84.070, Offenses in Public; adding new sections 10A.90.075, Supplying Tobacco to Minors, 10A.90.120, Drug Paraphernalia, 10A.90.130, Custodial Interference in the Second Degree, 10A.90.140, Abandonment of a Dependent Person in the Third Degree, 10A.90.150, Sexual Misconduct with a Minor in the Second Degree, 10A.84.110, Interference with Health Care Facility, 10A.52.110, Computer Trespass in the Second Degree, 10A.60.010, False Representation Concerning Credit, 10A.60.020, False Representation Concerning Title, 10A.60.030, False Certification, 10A.76.070, Escape in the Third Degree, to the Bellevue City Code; and amending the title of Bellevue City Code Chapter 10A.90.

WHEREAS, the state legislature has enacted legislation regarding a number of misdemeanor and gross misdemeanor crimes which before January 1, 1997, were prosecuted by the King County Prosecutor's Office; and

WHEREAS, the City has been notified that the King County Prosecutor's Office will no longer file misdemeanor and gross misdemeanor charges under those sections of the state code not adopted by city ordinance; and

WHEREAS, the City of Bellevue needs to adopt those state misdemeanor and gross misdemeanor laws that it wishes to enforce through the City Prosecutor's Office; and

WHEREAS, the following state misdemeanor and gross misdemeanor laws have been identified by City Police and Prosecution as those laws they seek to have adopted into Bellevue City Code for local enforcement, now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Bellevue City Code 10A.84.070, Offenses in Public, is amended to read as follows:

10A.84.070 Offenses in Public

It is unlawful for a person in public to:

- A. Refuse to pay proper fare in a public conveyance; or

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B. Open or drink any intoxicating liquor, or be in possession of an open container of any intoxicating liquor, in a public conveyance or public place not previously authorized by law; or

C. Sell any liquor to any person apparently under the influence of liquor.

Section 2. A new section 10A.90.075, Supplying Tobacco to Minors, is hereby added to the Bellevue City Code, to read as follows:

10A.90.075 Selling or Giving Cigarettes or Tobacco Products to Minors

A. Every person who sells or gives, or permits to be sold or given to any person under the age of eighteen years any cigarette, cigarette paper or wrapper, or tobacco product in any form is guilty of a gross misdemeanor.

B. It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

C. For purposes of this section, the following definitions apply:

1. "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

2. "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

Section 3. A new section 10A.90.120, Drug Paraphernalia, is hereby added to the Bellevue City Code, to read as follows:

10A.90.120 Drug Paraphernalia

A. It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

B. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

C. Any person eighteen years of age or over who violates subsection (B) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

D. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

E. As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

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6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

b. Water pipes;

c. Carburetion tubes and devices;

d. Smoking and carburetion masks;

e. Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

f. Miniature cocaine spoons, and cocaine vials;

g. Chamber pipes;

h. Carburetor pipes;

- i. Electric pipes;
- j. Air-driven pipes;
- k. Chillums;
- l. Bongs;
- m. Ice pipes or chillers.

F. In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substances;
3. The proximity of the object, in time and space, to a direct violation of this chapter;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intended to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
7. Instructions oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;

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11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

13. The existence and scope of legitimate uses for the object in the community; and

14. Expert testimony concerning its use.

Section 4. A new section 10A.90.130, Custodial Interference in the Second Degree, is hereby added to the Bellevue City Code, to read as follows:

10A.90.130 Custodial Interference in the Second Degree

A. A relative of a person is guilty of custodial interference in the second degree if, with the intent to deny access to such person by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person, the relative takes, entices, retains, detains, or conceals the person from a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such person. This subsection shall not apply to a parent's noncompliance with a court-ordered parenting plan.

B. A parent of a child is guilty of custodial interference in the second degree if:

1. The parent takes, entices, retains, detains, or conceals the child, with the intent to deny access, from the other parent having the lawful right to time with the child pursuant to a court-ordered parenting plan; or

2. The parent has not complied with the residential provisions of a court-ordered parenting plan after a finding of contempt under RCW 26.09.160(3); or

3. If the court finds that the parent has engaged in a pattern of willful violations of the court-ordered residential provisions.

C. Nothing in (2) of subsection (B) prohibits conviction of custodial interference in the second degree under (1) or (3) of subsection B in absence of findings of contempt.

D. The first conviction of custodial interference in the second degree is a gross misdemeanor. The second or subsequent conviction of custodial interference in the second degree is a class C felony.

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E. Any reasonable expenses incurred in locating or returning a child or incompetent person shall be assessed against a defendant convicted under this section.

F. In any prosecution under this section, it is a complete defense, if established by the defendant by a preponderance of the evidence, that:

1. The defendant's purpose was to protect the child, incompetent person, or himself or herself from imminent physical harm, that the belief in the existence of the imminent physical harm was reasonable, and that the defendant sought the assistance of the police, sheriff's office, protective agencies, or the court of any state before committing the acts giving rise to the charges or within a reasonable time thereafter;

2. The complainant had, prior to the defendant committing the acts giving rise to the crime, for a protracted period of time, failed to exercise his or her rights to physical custody or access to the child under a court-ordered parenting plan or order granting visitation rights, provided that such failure was not the direct result of the defendant's denial of access to such person;

3. The acts giving rise to the charges were consented to by the complainant; or

4. The offender, after providing or making a good faith effort to provide notice to the person entitled to access to the child, failed to provide access to the child due to reasons that a reasonable person would believe were directly related to the welfare of the child, and allowed access to the child in accordance with the court order within a reasonable period of time. The burden of proof that the denial of access was reasonable is upon the person denying access to the child.

5. Consent of a child less than sixteen years of age or of an incompetent person does not constitute a defense to an action under this section.

Section 5. A new section 10A.90.140, Abandonment of a Dependent Person in the Third Degree, is hereby added to the Bellevue City Code, to read as follows:

10A.90.140 Abandonment of a Dependent Person in the Third Degree

A. A person is guilty of the crime of abandonment of a dependent person in the third degree if:

1. The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, or a person employed to provide to the child or dependent person any of the basic necessities of life; and

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2. The person recklessly abandons the child or other dependent person; and:

a. As a result of being abandoned, the child or other dependent person suffers bodily harm; or

b. Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other person will suffer substantial bodily harm.

B. Abandonment of a dependent person in the third degree is a gross misdemeanor.

C. It is an affirmative defense to the charge of abandonment of a dependent person, that the person employed to provide any of the basic necessities of life to the child or other dependent person, gave reasonable notice of termination of services and the services were not terminated until after the termination date specified in the notice. The notice must be given to the child or dependent person, and to other persons or organizations that have requested notice of termination of services furnished to the child or other dependent person.

Section 6. A new section 10A.90.150, Sexual Misconduct with a Minor in the Second Degree, is hereby added to the Bellevue City Code, to read as follows:

10A.90.150 Sexual Misconduct with a Minor in the Second Degree

A. A person is guilty of sexual misconduct with a minor in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage or cause another person under the age of eighteen to engage in sexual contact with the victim.

B. In any prosecution under this section it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim was at least eighteen, or was less than sixty months younger than the defendant based upon declarations as to age by the alleged victim.

C. Sexual misconduct with a minor in the second degree is a gross misdemeanor.

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Section 7. A new section 10A.84.110, Interference with Health Care Facility, is hereby added to the Bellevue City Code, to read as follows:

10A.84.110 Interference with Health Care Facility

A. It is unlawful for a person except as otherwise protected by state or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a health care facility or willfully or recklessly disrupt the normal functioning of such facility by:

1. Physically obstructing or impeding the free passage of a person seeking to enter or depart from the facility or from the common areas of the real property upon which the facility is located;

2. Making noise that unreasonably disturbs the peace within the facility;

3. Trespassing on the facility or the common areas of the real property upon which the facility is located;

4. Telephoning the facility repeatedly, or knowingly permitting any telephone under his or her control to be used for such purpose; or

5. Threatening to inflict injury on the owners, agents, patients, employees, or property of the facility or knowingly permitting any telephone under his or her control to be used for such purpose.

B. For purposes of this section the following definitions apply:

1. "Health care facility" means a facility that provides health care services directly to patients, including but not limited to, a hospital, clinic, health care provider's office, health maintenance organization, diagnostic or treatment center, neuropsychiatric or mental health facility, hospice, or nursing home.

2. "Health care provider" has the same meaning as defined in RCW 7.70.020 (1) and (2), and also means an officer, director, employee, or agent of a health care facility who sues or testifies regarding matters within the scope of his or her employment.

3. "Aggrieved" means:

a. A person, physically present at the health care facility when the prohibited actions occur, whose access is or is about to be obstructed or impeded;

b. A person, physically present at the health care facility when the prohibited actions occur, whose care is or is about to be disrupted;

- c. The health care facility, its employees, or agents;
- d. The owner of the health care facility or the building or property upon which the health care facility is located.

C. A violation of this section is a gross misdemeanor. A person convicted of violating this section shall be punished as follows:

- 1. For a first offense, a fine of not less than two hundred fifty dollars and a jail term of not less than twenty-four consecutive hours;
- 2. For a second offense, a fine of not less than five hundred dollars and a jail term of not less than seven consecutive days; and
- 3. For a third or subsequent offense, a fine of not less than one thousand dollars and a jail term of not less than thirty consecutive days.

Section 8. A new section 10A.52.110, Computer Trespass in the Second Degree, is hereby added to the Bellevue City Code, to read as follows:

10A.52.110 Computer Trespass in the Second Degree

A. A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another under circumstances not constituting the offense in the first degree as defined in RCW 9A.52.110.

B. Computer trespass in the second degree is a gross misdemeanor.

C. 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.

Section 9. A new section 10A.60.010, False Representation Concerning Credit, is hereby added to the Bellevue City Code, to read as follows:

10A.60.010 False Representation Concerning Credit

Every person who, with intent thereby to obtain credit or financial rating, shall willfully make any false statement in writing of his assets or liabilities to any person with whom he may be either actually or prospectively engaged in any business transaction or to any commercial agency or other person engaged in the business of collecting or disseminating information concerning financial or commercial ratings, shall be guilty of a misdemeanor.

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Section 10. A new section 10A.60.020, False Representation Concerning Title, is hereby added to the Bellevue City Code, to read as follows:

10A.60.020 False Representation Concerning Title

Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.

Section 11. A new section 10A.60.030, False Certification, is hereby added to the Bellevue City Code, to read as follows:

10A.60.030 False Certification

A. A person is guilty of false certification, if, being an officer authorized to take a proof or acknowledgment of an instrument which by law may be recorded, he knowingly certifies falsely that the execution of such instrument was acknowledged by any party thereto or that the execution thereof was proved.

B. False certification is a gross misdemeanor.

Section 12. A new section 10A.76.070, Escape in the Third Degree, is hereby added to the Bellevue City Code, to read as follows:

10A.76.070 Escape in the Third Degree

A. A person is guilty of escape in the Third Degree if he escapes from custody.

B. For purposes of this section "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: PROVIDED, That custody pursuant to chapter 13.34 RCW and RCW 74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this section.

C. Escape in the third degree is a gross misdemeanor.

Section 13. The title of Chapter 10A.90 of the Bellevue City Code is hereby amended to read as follows:

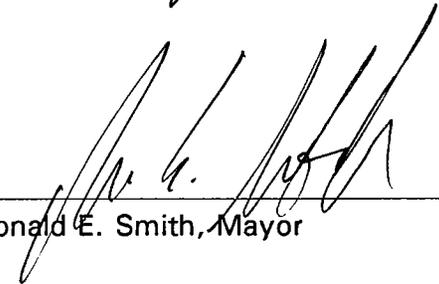
10A.90 Offenses Involving Alcohol, Drugs, Minors and Dependent Persons

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Section 14. This ordinance shall take effect and be in force thirty (30) days after passage by the City Council.

PASSED by the City Council this 5th day of May, 1997, and signed in authentication of its passage this 5th day of May, 1997.

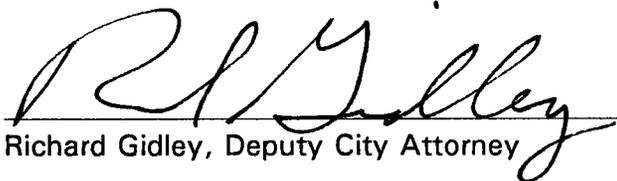
(SEAL)



Ronald E. Smith, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Richard L. Andrews, City Attorney

Attest:



Myrna L. Basich, City Clerk

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