

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5172

AN ORDINANCE regarding the Bellevue Criminal Code; amending Bellevue City Code 10A.38.010, Harassment, Definition - Penalties; 10A.96.060, Stalking; 10A.84.070, Offenses in Public; 10A.88.085, Sex Offender Failure to Register; and adding new sections 10A.84.072, Opening or Consuming Liquor in Public; 10A.88.087, Custodial Sexual Misconduct; 10A.96.035, Personal Flotation Devices - Children; 10A.60.060, Counterfeiting; 10A.96.070, Unlawful Discharge of Lasers; 10A.90.062, Unlawful to Furnish a Keg of Malt Liquor to a Minor; 10A.60.070, Falsifying a Referendum or Petition; 10A.90.145, Failure to File Reports Concerning Vulnerable Adults; and 10A.60.080, Vehicle Wreckers - Required Records, to the Bellevue City Code.

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; and

WHEREAS, the City of Bellevue needs to adopt as City ordinances 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 that need to be adopted into Bellevue City Code for local enforcement; and

WHEREAS, it is necessary to amend certain provisions relating to existing crimes; now therefore,

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

Section 1. Bellevue City Code 10A.38.010, Harassment, Definition – Penalties, is amended to read as follows:

10A.38.010 Definition – Penalties.

- A. A person is guilty of harassment if:
 - 1. Without lawful authority, the person knowingly threatens:
 - a. To cause bodily injury in the future to the person threatened or to any other person, or

b. To cause physical damage to the property of a person other than the actor, or

c. To subject the person threatened or any other person to physical confinement or restraint, or

d. Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and

2. The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

3. Except as provided in BCC 10A.96.070(4), the person commits the crime of unlawful discharge of a laser in the second degree against the person threatened.

B. A person who harasses another is guilty of a gross misdemeanor.

C. The penalties provided in this section for harassment do not preclude the victim from seeking any other remedy otherwise available under law.

Section 2. Bellevue City Code 10A.96.060, Stalking, is amended to read as follows:

10A.96.060 Stalking.

A. A person is guilty of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

1. He or she intentionally and repeatedly harasses or repeatedly follows another person; and

2. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

3. The stalker either:

a. Intends to frighten, intimidate, or harass the person; or

b. Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

B. 1. It is not a defense to the crime of stalking under subsection (A)(3)(a) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

2. It is not a defense to the crime of stalking under subsection (A)(3)(b) of this section that the stalker did not intend to frighten, intimidate or harass the person.

C. It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by Chapter 18.165 RCW.

D. Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

E. A person who stalks another person is guilty of a gross misdemeanor.

F. As used in this section:

1. "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

2. "Harasses" means unlawful harassment as defined in RCW 10.14.020 and includes, but is not limited to, unlawful discharge of laser in the second degree.

3. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Course of conduct includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic communication. Constitutionally protected activity is not included within the meaning of "course of conduct."

4. "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

Section 3. 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

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

Section 4. Bellevue City Code 10A.88.085, Sex Offender Failure to Register, is amended to read as follows:

10A.88.085 Sex Offender Failure to Register.

Any adult or juvenile required by RCW 9A.441130 to register with the county sheriff, who knowingly fails to register with the county sheriff or notify the county sheriff as required by RCW 9A.44.130, who changes his or her name without notifying the county sheriff and the state patrol, or who moves without notifying the county sheriff as required by RCW 9A.44.130 is guilty of a gross misdemeanor if the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony.

Section 5. A new section 10A.84.072, Opening or Consuming Liquor in Public, is hereby added to the Bellevue City Code to read as follows:

10A.84.072 Opening or Consuming Liquor in Public.

Except as permitted by Title 66.44 RCW, no person shall open a package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under Chapter 7.80 RCW.

Section 6. A new section 10A.88.087, Custodial Sexual Misconduct in the second degree, is hereby added to the Bellevue City Code to read as follows:

10A.88.087 Custodial Sexual Misconduct in the Second Degree.

A. A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

1. When:

(a) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(b) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

2. When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

B. Consent of the victim is not a defense to a prosecution under this section.

C. It is an affirmative defense to prosecution under this section, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

D. Custodial sexual misconduct in the second degree is a gross misdemeanor.

Section 7. A new section 10A.96.035, Personal Flotation Devices – Children, is hereby added to the Bellevue City Code to read as follows:

10A.96.035 Personal Flotation Devices – Children.

A. No person shall operate a vessel under nineteen feet in length on the waters of this City with a child twelve years old and under, unless the child is wearing a personal flotation device that meets or exceeds the United States coast guard approval standards of the appropriate size, while the vessel is underway. For the purposes of this section, a personal flotation device is not considered readily accessible for children twelve years old and under unless the device is worn by the child while the vessel is underway. The personal flotation device must be worn at all times by a child twelve years old and under whenever the vessel is underway and the child is on an open deck or open cockpit of the vessel. The following circumstances are excepted:

- a. While a child is below deck or in the cabin of a boat with an enclosed cabin;
- b. While a child is on a United States coast guard inspected passenger-carrying vessel operating on the navigable waters of the City; or
- c. While on board a vessel at a time and place where no person would reasonably expect a danger of drowning to occur.

A violation of this section is an infraction under Chapter 7.84 RCW unless the person who is charged with violating this section has previously committed two infractions for violating this section within the past 365 days, in which case a violation of this section is a misdemeanor as provided in RCW 88.12.015.

B. Enforcement of this section by law enforcement officers may be accomplished as a primary action, and need not be accompanied by the suspected violation of some other offense.

Section 8. A new section 10A.60.060, Counterfeiting, is hereby added to the Bellevue City Code, to read as follows:

10A.60.060 Counterfeiting.

A. Definitions: The definitions in this section apply throughout unless the context clearly requires otherwise.

- 1. “Counterfeit mark” means:
 - a. Any unauthorized reproduction or copy of intellectual property;or
 - b. Intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.
- 2. “Intellectual property” means any trademark, service mark, trade name, label, term, device, design, or work adopted or used by a person to identify such person’s goods or services. Intellectual property does not have exclusive use rights to trade names registered under Chapter 19.80 RCW.

3. "Retail Value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

B. Any person who willfully and knowingly, and for financial gain, manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any item, or offers any services, bearing or identified by a counterfeit mark, is guilty of the crime of counterfeiting. Any state or federal certificate of registration of any intellectual property is prima facie evidence of the facts stated in the certificate.

C. Counterfeiting is a misdemeanor, except as provided in subsection (1) below:

(1) Counterfeiting is a gross misdemeanor if:

(a) The defendant has previously been convicted under RCW 9.16.030; or

(b) The violation involves more than one hundred but fewer than one thousand items bearing a counterfeit mark or the total retail value of all items bearing a counterfeit mark or the total retail value of all items bearing, or services identified by, a counterfeit mark is more than one thousand dollars but less than ten thousand dollars.

D. For purposes of this section, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, possesses, or possesses with intent to sell.

E. A person guilty of counterfeiting shall be fined an amount up to three times the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

F. Penalties provided for in this section are cumulative and do not affect any other civil and criminal penalties provided by law.

G. Upon request of the intellectual property owner, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition. If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition.

H. All personal property employed or used in connection with counterfeiting, including but not limited to, any items, objects, tools, machines, equipment, instruments, or vehicles of any kind, shall be seized by any law enforcement officer and shall be forfeited in accordance with RCW 10.105.010.

Section 9. A new section 10A.96.070, Unlawful Discharge of Lasers, is hereby added to the Bellevue City Code to read as follows:

10A.96.070 Unlawful Discharge of Lasers.

Legislative finding: The City Council adopts the finding of the Washington State Legislature and finds that lasers are becoming both less expensive and more accessible in our technologically advanced society. Laser devices are being used by individuals in a manner so as to intimidate and harass. This creates an especially serious problem for law enforcement officers who reasonably believe they are the target of a laser sighting device on a firearm. Additionally, emergency service providers, service providers, and others who operate aircraft or motor vehicles may be negatively affected to the point of jeopardizing their safety as well as the safety of others. In order to address the misuse of lasers, the City Council hereby finds it necessary to criminalize the discharge of lasers under certain circumstances.

1. Definitions: The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Aircraft" means any contrivance known or hereafter invented, used or designed for navigation of or flight in air.

(b) "Laser" means any device designed or used to amplify electromagnetic radiation by simulated emission which is visible to the human eye.

(c) "Laser sighting system or device" means any system or device which is integrated with or affixed to a firearm and which emits a laser light beam that is used by the shooter to assist in the sight alignment of that firearm.

2. A person is guilty of unlawful discharge of a laser in the second degree if he or she knowingly and maliciously discharges a laser, under circumstances not amounting to unlawful discharge of a laser in the first degree or malicious mischief in the first or second degree as defined by Chapter 9A.48 RCW:

(a) At a person, not described in section 3(1)(b) through (f) of Chapter 180, Washington Laws of 1999, who is operating a motor vehicle at the time, causing an impairment of the safety or operation of a motor vehicle by negatively affecting the driver; or

(b) At a person described in section 3(1)(b) through (f) of Chapter 80, Washington Laws of 1999, causing a substantial risk of an impairment or interruption as described in section 3(1)(b) through (f) of Chapter 180, Washington Laws of 1999; or

(c) At a person in order to intimidate or threaten that person.

3. Except as provided in subsection 4 of this section, unlawful discharge of a laser in the second degree is a gross misdemeanor.

4. Unlawful discharge of a laser in the first degree or second degree is a civil infraction if committed by a juvenile who has not before committed either offense. The monetary penalty imposed upon a juvenile may not exceed one hundred dollars.

Section 10. A new section 10A.90.062, Unlawful to Furnish a Keg of Malt Liquor to a Minor, is hereby added to the Bellevue City Code to read as follows:

10A.90.062 Unlawful to Furnish a Keg of Malt Liquor to a Minor.

Except as provided in Chapter 10A.90 BCC, a person who intention-ally furnishes a keg or other container containing four or more gallons of malt liquor to a person under the age of twenty-one years is guilty of a gross misdemeanor.

Section 11. A new section 10A.60.070, Falsifying a Referendum or Petition, is hereby added to the Bellevue City Code to read as follows:

10A.60.070 Falsifying a Referendum or Petition.

In a situation not covered by RCW 29.79.440, 29.79.490, 29.82.170, or 29.82.220, every person who shall willfully sign the name of another person or of a fictitious person, or for any consideration, gratuity or reward shall sign his own name to or withdraw his name from any referendum or other petition circulated in pursuance of any law of this state or any municipal ordinance; or in signing his name to such petition shall willfully subscribe to any false statement concerning his age, citizenship, residence or other qualifications to sign the same, or knowing that any such petition contains any such false or wrongful signature or statement, shall file the same, or put the same off with intent that it should be filed, as a true and genuine petition, shall be guilty of a misdemeanor.

Section 12. A new section 10A.90.145, Failure to File Reports Concerning Vulnerable Adults, is hereby added to the Bellevue City Code to read as follows:

10A.90.145 Failure to File Reports Concerning Vulnerable Adults.

A. Definitions: Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(1) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RDW; or

(f) Receiving services from an individual provider.

(2) "Mandated reporter" is an employee of the state department of social and health services; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(3) "Permissive reporter" means any person, employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

B. (1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the state department of social and health services (DSHS). If there is reason to suspect that sexual or physical assault has occurred, mandated reporters shall immediately report to the Bellevue Police Department and to DSHS.

(2) Permissive reporters may report to DSHS or the police department when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(3) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this subsection or under 74.34 RCW is confidential.

C. (1) A person who is required to make a report under 74.34 RCW or under this section and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor.

Section 13. A new section 10A.60.080, Vehicle Wreckers - Required Records, is hereby added to the Bellevue City Code to read as follows:

10A.60.080 Vehicle Wreckers - Required Records.

A. Every vehicle wrecker shall maintain books or files in which the wrecker shall keep a record and a description of:

(1) Every vehicle wrecked, dismantled, disassembled, or substantially altered by the wrecker; and

(2) Every major component part acquired by the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm or corporation from whom the wrecker purchased the vehicle or part. Major component parts other than cores shall be further identified by the vehicle identification number of the vehicle from which the part came.

B. The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle that is the source of a major component part other than a core:

(1) The certificate of title number (if previously titled in this or any other state);

(2) Name of state where last registered;

(3) Number of the last license number plate issued;

- (4) Name of vehicle;
- (5) Motor or identification number and serial number of the vehicle;
- (6) Date purchased;
- (7) Disposition of the motor and chassis;
- (8) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and
- (9) such other information as required by the state department of licensing.

C. The records shall also contain a bill of sale signed by the seller for other minor component parts acquired by the vehicle wrecker, identifying the seller by name, address and date of sale.

D. The records shall be maintained by the vehicle wrecker at his or her established place of business for a period of three years from the date of acquisition.

E. The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employee of the state department of licensing.

F. A vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the vehicle wrecker's place of business or to other places designated by the owner of the vehicle or his or her representative. This record shall specify the name and description of the vehicle, name of the owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

G. Failure to comply with this section is a gross misdemeanor.

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 1st day of November, 1999, and signed in authentication of its passage this 1st day of November, 1999.

(SEAL)

Mike Creighton, Mayor

Approved as to form:
Richard L. Andrews, City Attorney

Richard Gidley, Deputy City Attorney
Attest:

Myrna L. Basich, City Clerk
Published November 5, 1999.