Item No. 3(c)(2)
February 24, 2014

CITY COUNCIL STUDY SESSION ITEM

SUBJECT
Proposed Ordinance creating a new gross misdemeanor of loitering with the intent of engaging in drug related activity by adding a new section to Chapter 10.06 of the Bellevue City Code.

STAFF CONTACT
Police Chief Linda Pillo, ex. 4334
Deputy Police Chief Jim Jolliffe ex. 4443
Police Department

Siona Windsor, Assistant City Attorney, ex. 4086
City Attorney's Office

POLICY ISSUES
Whether a new gross misdemeanor of loitering with the intent of engaging in drug related activity would benefit the Bellevue Police Department, the City and the public by augmenting officers' available investigative resources to combat drug related activity.

DIRECTION NEEDED FROM COUNCIL
____ Action
_X_ Discussion
_X_ Information

BACKGROUND

Some specific areas in Bellevue have experienced illegal street sales of controlled substances. The sellers stand on public sidewalks waiting for customers. When the customers approach, they are directed to walk with the seller or an accomplice of the seller to a secluded area where the sale takes place. The Police Department has a very limited ability to combat this problem. Nearby apartment complex managers, business owners, and residents have complained about the drug trafficking on and near their private properties.

Several cities, including Seattle and Tacoma, have made it a gross misdemeanor for any person to loiter in public in a manner and under circumstances manifesting the intent to engage in illegal drug-related activity. These laws have been upheld by the Washington Supreme Court against certain constitutional challenges.

In 2011, the Bellevue Police Department proposed to Council an ordinance to make it a gross misdemeanor to loiter in public for the purpose of selling drugs. The initial draft ordinance was based on the Tacoma Drug Loitering ordinance that the Washington Supreme Court upheld in 1992. It was withdrawn from Council consideration after the Council expressed concerns about the possible over breadth of the draft ordinance.

The Police Department has prepared a new draft ordinance in response to Council concerns. The proposed drug loitering ordinance requires the person have a specific intent to engage in drug trafficking. This ordinance is based on the drug loitering ordinance that Seattle enacted in 1992 (SMC 12A.20.050). The Supreme Court favorably referred to this Seattle ordinance in upholding the constitutionality of the Tacoma Ordinance. The proposed ordinance lists circumstances for the officers to consider when assessing whether a person is manifesting the intent to engage in drug trafficking.

If adopted, it will become a gross misdemeanor, punishable by up to one year in jail and/or a fine of up to $5,000, for a person to loiter in public manifesting the intent to engage in illegal drug related activity. If the officer observes circumstances that give the officer a reasonable suspicion that the person is loitering with this intent, the officer will have the ability to investigate this possible offense. If the officer finds probable cause to believe the person is loitering with this intent, the officer will have the ability to arrest the person. The person may then be charged with this offense in district court. If illegal controlled substances are found on the person during the search incident to arrest, the person may be charged in Superior Court with a felony violation of the Controlled Substance Act.

ALTERNATIVES

1. Adopt this Ordinance at a regular session of the City Council.
2. Request further information from staff.
3. Provide other direction to staff.

RECOMMENDATION

Adopt at a regular session of the City Council an ordinance creating the gross misdemeanor of loitering with the intent of engaging in drug related activity.

ATTACHMENTS

Proposed Ordinance

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of Bellevue, Washington, defining criminal conduct, and adding new sections to Chapter 10.06 of the Bellevue Code.

WHEREAS, some areas of the City are experiencing illegal drug sales out in public; and

WHEREAS, at times the Police are unable to combat this problem under current laws; and

WHEREAS, the City Council of Bellevue recognizes the need to protect the community from illegal drug sales in public places in furtherance of its goals in creating a safe environment for its citizenry; now, therefore,

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

Section 1. The Bellevue Municipal code shall be amended to add a section to Chapter 10.06 Miscellaneous Offenses to read as follows:

10.06.041 Drug Traffic Loitering.

A. As used in this section:

1. "Conviction" means an adjudication of guilt pursuant to Tiles 10 or 13 RCW, or the equivalent provisions of any federal statute, state statute or ordinance of any political subdivision of this state, and includes a verdict of guilty, a finding of guilty and an acceptance of a plea of guilty.

2. "Drug paraphernalia" means drug paraphernalia as the term is defined in the Uniform Controlled Substance Act, RCW 69.50.102, excluding, however, items obtained from or exchanged at any needle exchange program sponsored by the Seattle-King County Health Department or other governmental agencies, and hypodermic syringes or needles in the possession of a confirmed diabetic or a person directed by his or her physician to use such items.

3. "Illegal drug activity" means unlawful conduct contrary to any provision of RCW Chapter 69.41. 69.50, or 69.52, or the equivalent federal statute, state statute, or ordinance of any political subdivision of this state.

4. "Known drug trafficker" means a person who has, within the knowledge of the arresting officer, been convicted within the last two years in any court of any felony illegal drug activity.

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5. “Public place” is an area generally visible to public view and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, transit stations, shelters and tunnels, automobiles visible to public view (whether moving or not), and building, including those which serve food or drink, or provide entertainment, and the doorways and entrances to building or dwellings and the grounds enclosing them.

B. A person is guilty of drug-traffic loitering if he or she remains in a public place and intentionally solicits, induces, entices, or procures another to engage in unlawful conduct contrary to Chapter 69.50, Chapter 69.41, or Chapter 69.52, Revised Code of Washington.

C. The following circumstances do not by themselves constitute the crime of drug-traffic loitering. Among the circumstances which may be considered in determining whether the actor intends such prohibited conduct are that he or she:

1. Is seen by the officer to be in possession of drug paraphernalia; or

2. Is a known drug trafficker (provided, however, that being a known drug trafficker, by itself does not constitute the crime of drug-traffic loitering); or

3. Repeatedly beckons to, stops or attempts to stop passersby, or engages passersby in conversation; or

4. Repeatedly stops or attempts to stop motor vehicle operators by hailing, waiving of arms or any other bodily gesture; or

5. Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to stop pedestrians; or

6. Is the subject of any court order, which directs the person to stay out of any specified area as a condition of release from custody, a condition of probation or parole or other supervision or any court order, in a criminal or civil case involving illegal drug activity; or

7. Has been evicted as the result of his or her illegal drug activity and ordered to stay out of a specified area affected by drug-related activity.

D. No person may be arrested for drug-traffic loitering unless probable cause exists to believe that he or she has remained in a public place and has intentionally solicited, inducted, enticed or procured another to engage in unlawful conduct contrary to Chapter 69.50, Chapter 69.41, or Chapter 69.52 Revised Code of Washington.

E. Any person who violates the provisions of this ordinance is guilty of a gross misdemeanor and, upon conviction, may be imprisoned for up to one year and be subject to a fine of not more than $5,000.00.

Section 2. If any provision of this ordinance is held invalid, such invalidity shall not affect any other provision, or the application thereof, which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

Section 3. This ordinance shall take effect and be in force thirty (30) days after passage and legal publication.

Passed by the City Council this _____ day of _____, 2014 and signed in authentication of its passage this _____ day of _____, 2014.

(SEAL)

_____
Claudia Balducci, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

_____
Siona D. Windsor, Assistant City Attorney

Attest:

_____
Myrna L. Basich, City Clerk

Published _____

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