

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Ordinance No. 6005 defining criminal conduct and adding a new section to Chapter 10.06 of the Bellevue City Code

FISCAL IMPACT

This proposed ordinance creates a new gross misdemeanor of Loitering with the intent of engaging in drug-related activity. It is not possible to estimate revenue resulting from anticipated violations.

STAFF CONTACT

Cherie Baker, Deputy Chief ex. 7101
Kyle Aiken, Police Legal Advisor ex. 7826
Police Department

POLICY CONSIDERATION

Whether the Council should create a new gross misdemeanor of Loitering with the intent of engaging in drug-related activity.

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.

Several cities 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.

If adopted, it will become a gross misdemeanor, punishable by up to one year in jail and/or a fine of \$5000, for a person to loiter in public manifesting the intent to engage in drug-related activity. If an officer observes circumstances that gives 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 Substances Act.

Council discussed this proposed ordinance at its May 23 study session and directed staff to respond to questions and return with the ordinance.

EFFECTIVE DATE

If approved, this ordinance will become effective 30 days after passage on July 20, 2011.

OPTIONS

1. Adopt this ordinance and create the gross misdemeanor.
2. Do not adopt this ordinance and provide alternative direction to staff.

RECOMMENDATION

Adopt Ordinance No. 6005 creating the gross misdemeanor of Loitering with the intent of engaging in drug-related activity.

MOTION

Move to adopt Ordinance No. 6005 to create the gross misdemeanor of Loitering with the intent of engaging in drug-related activity.

ATTACHMENTS

Proposed Ordinance No. 6005

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6005

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, 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 sales in public places in furtherance of its goal 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 Loitering with the intent of engaging in drug-related activity.

A. It is unlawful for any person to loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the purpose to engage in drug-related activity contrary to any of the provisions of Chapters 69.41, 69.50, or 69.52 RCW.

B. Among the circumstances which may be considered in determining whether such intent is manifested are:

1. Such person is a known unlawful drug user, possessor, or seller. For purposes of this ordinance, a "known unlawful drug user, possessor, or seller" is a person who has been convicted in any court within this state of any violation involving the use, possession, or sale of any of the substances referred to in Chapters 69.41, 69.50, and 69.52 RCW, or substantially similar laws of any political subdivision of this state or of any other state; or a person who displays physical characteristics of drug intoxication or usage, such as "needle tracks"; or a person who possess drug paraphernalia as defined in RCW 69.50.102;

2. Such person is currently subject to an order prohibiting his/her presence in a high drug demographic area;

3. Such person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is then engaged in an unlawful drug-related activity, including by way of example only, such person acting as a "lookout";

4. Such person is physically identified by the officer as a member of a "gang" or association which has as its purpose illegal drug activity;

5. Such person transfers small objects or packages for currency in a furtive fashion;

6. Such person takes flight upon the appearance of a police officer;

7. Such person manifestly endeavors to conceal himself or herself or any object which reasonably could be involved in an unlawful drug-related activity;

8. The area involved is by public repute known to be an area of unlawful drug use and trafficking;

9. The premises involved are known to have been reported to law enforcement as a place suspected of drug activity pursuant to Chapter 69.52 RCW;

10. Any vehicle involved is registered to a known unlawful drug user, possessor, or seller, or a person for whom there is an outstanding warrant for a crime involving drug-related activity;

C. Any person who violates the provisions of this ordinance is guilty of a gross misdemeanor and, upon conviction, shall be imprisoned for up to one year and be subject to a fine of not more than \$5,000.000.

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 _____, 2011,
and signed in authentication of its passage this _____ day of _____,
2011.

(SEAL)

1223-ORD
06/06/2011

Don Davidson, DDS
Mayor

Approved as to form:

Lori M. Riordan, City Attorney

Siona D. Windsor, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk