

2364
12/2/76

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 2364

AN ORDINANCE adding a new Chapter 10.04 to the Bellevue City Code and adopting by reference parts of Chapters 9A.04 RCW through 9A.28 RCW as they apply to the Bellevue City Code, Title 10: Penal Code and City ordinances defining crimes within the criminal jurisdiction of the City of Bellevue; and thereby adding a new chapter to the Penal Code.

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

Section 1. The following sections of Chapter 9A.04 RCW through 9A.12 RCW are hereby adopted by this reference adding the following new sections to the Bellevue City Code:

10.04.010 People Capable of Committing Crimes - Capability of Children.

Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be resolved by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong.

Whenever, in legal proceedings it becomes necessary to determine the age of a child, he may be produced for inspection, to enable the court or jury to determine the age thereby; and the court may also direct his examination by one or more physicians, whose opinion shall be competent evidence upon the question of his age. (RCW 9A.04.050)

10.04.020 Who Amenable to Criminal Statutes.

Every person, regardless of whether or not he is an inhabitant of this state, may be tried and punished under the laws of this state for an offense committed by him therein, except when such offense is recognizable exclusively in the courts of the United States. (RCW 9A.04.070)

10.04.030 General Requirements of Culpability.

(1) Kinds of Culpability Defined.

- (a) INTENT. A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.
- (b) KNOWLEDGE. A person knows or acts knowingly or with knowledge when:
 - (i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
 - (ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.
- (c) RECKLESSNESS. A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.
- (d) CRIMINAL NEGLIGENCE. A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

- (2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

- (3) **Culpability as Determinant of Grade of Offense.** When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.
- (4) **Requirement of Wilfulness Satisfied by Acting Knowingly.** A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. (RCW 9A.08.010)

10.04.040 Liability for Conduct of Another - Complicity.

- (1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.
- (2) A person is legally accountable for the conduct of another person when:
 - (a) Acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent or irresponsible person to engage in such conduct; or
 - (b) He is made accountable for the conduct of such other person by this title or by the law defining the crime; or
 - (c) He is an accomplice of such other person in the commission of the crime.
- (3) A person is an accomplice of another person in the commission of a crime if:
 - (a) With knowledge that it will promote or facilitate the commission of the crime, he
 - (i) solicits, commands, encourages, or requests such other person to commit it; or
 - (ii) aids or agrees to aid such other person in planning or committing it; or

- (b) His conduct is expressly declared by law to establish his complicity.
- (4) A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.
- (5) Unless otherwise provided by this title or by the law defining the crime, a person is not an accomplice in a crime committed by another person if:
 - (a) He is a victim of that crime; or
 - (b) He terminates his complicity prior to the commission of the crime and either gives timely warning to the law enforcement authorities or otherwise makes a good faith effort to prevent the commission of the crime.
- (6) A person legally accountable for the conduct of another person may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted or has been convicted of a different crime or degree of crime or has an immunity to prosecution or conviction or has been acquitted.
(RCW 9A.08.020)

10.04.050 Criminal Liability of Corporations and Persons Acting or Under a Duty to Act in Their Behalf.

- (1) As used in this section:
 - (a) "Agent" means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation;
 - (b) "Corporation" includes a joint stock association;
 - (c) "High managerial agent" means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

- (2) A corporation is guilty of an offense when:
- (a) The conduct constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or
 - (b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and on behalf of the corporation; or
 - (c) The conduct constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of his employment and in behalf of the corporation and (i) the offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation.
- (3) A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.
- (4) Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows he has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.
(RCW 9A.08.030)

10.04.060 Definitions.

In this chapter, unless a different meaning is plainly required:

"Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.
(RCW 9A.16.010)

10.04.070 Use of Force - When Lawful.

The use, attempt, or offer to use force upon or toward the person of another shall not be unlawful in the following cases:

- (1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting him and acting under his direction;
- (2) Whenever necessarily used by a person arresting one who has committed a felony and delivering him to a public officer competent to receive him into custody;
- (3) Whenever used by a party about to be injured, or by another lawfully aiding him, in preventing or attempting to prevent an offense against his person, or a malicious trespass, or either malicious interference with real or personal property lawfully in his possession, in case the force is not more than shall be necessary;
- (4) Whenever used in a reasonable and moderate manner by a parent or his authorized agent, a guardian, master, or teacher in the exercise of lawful authority, to restrain or correct his child, ward, apprentice, or scholar;
- (5) Whenever used by a carrier of passengers or his authorized agent or servant, or other person assisting them at their request in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, provided that such vehicle has first been stopped and the force used is not more than shall be necessary to expel the offender with reasonable regard to his personal safety;
- (6) Whenever used by any person to prevent a mentally retarded person or a mentally ill person from committing an act dangerous to himself or another, or in enforcing necessary restraint for the protection of his person, or his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person. (RCW 9A.16.020)

10.04.080 Duress.

- (1) In any prosecution for a crime, it is a defense that:

- (a) The actor participated in the crime under compulsion by another who by threat or use of force created an apprehension in the mind of the actor that in case of refusal he or another would be liable to immediate death or immediate grievous bodily injury; and
 - (b) That such apprehension was reasonable upon the part of the actor; and
 - (c) That the actor would not have participated in the crime except for the duress involved.
- (2) The defense of duress is not available if the crime charged is murder or manslaughter.
 - (3) The defense of duress is not available if the actor intentionally or recklessly places himself in a situation in which it is probable that he will be subject to duress.
 - (4) The defense of duress is not established solely by a showing that a married person acted on the command of his or her spouse. (RCW 9A.16.060)

10.04.090 Entrapment.

- (1) In any prosecution for a crime, it is a defense that:
 - (a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and
 - (b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit.
- (2) The defense of entrapment is not established by a showing, only that law enforcement officials merely afforded the actor an opportunity to commit a crime. (RCW 9A.16.070)

10.04.100 Action for Being Detained on Mercantile Establishment premises for investigation--"Reasonable Grounds" as defense.

In any criminal action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation

or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer, by the owner of the mercantile establishment, or by the owner's authorized employee or agent, and that such peace officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft or shoplifting on such premises of such merchandise. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

10.04.110 Intoxication.

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular mental state is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such mental state.

10.04.120 Insanity.

To establish the defense of insanity, it must be shown that:

- (1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that:
 - (a) He was unable to perceive the nature and quality of the act with which he is charged; or
 - (b) He was unable to tell right from wrong with reference to the particular act charged.
- (2) The defense of insanity must be established by a preponderance of the evidence.

Section 2. The following new sections are hereby added to the Bellevue City Code, Chapter 10.04 of the Penal Code:

10.04.130 Criminal Attempt.

- (1) A person is guilty of an attempt to commit crime if, with intent to commit a specific crime, he does any act which is a substantial step toward the commission of that crime.
- (2) If the conduct in which a person engages otherwise constitutes an attempt to commit a crime, it is no defense to a prosecution of such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.
- (3) An attempt to commit a crime is a misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor.

10.04.140 Criminal Solicitation.

- (1) A person is guilty of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.
- (2) Criminal solicitation shall be punished in the same manner as criminal attempt under section 10.04.040.

10.04.150 Criminal Conspiracy.

- (1) A person is guilty of a criminal conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them takes a substantial step in pursuance of such agreement.
- (2) It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:
 - (a) Has not been prosecuted or convicted; or
 - (b) Has been convicted of a different offense; or

2364
12/2/76

- (c) It is not amenable to justice; or
 - (d) Has been acquitted; or
 - (e) Lacked the capacity to commit an offense.
- (3) Criminal conspiracy is a misdemeanor when an object of the conspiratorial agreement is a gross misdemeanor or misdemeanor.

Section 3. This ordinance shall take effect and be in force 30 days after enactment by the City Council.

PASSED by the City Council this 6 day of December 1976, and signed in authentication of its passage this 6 day of December 1976.

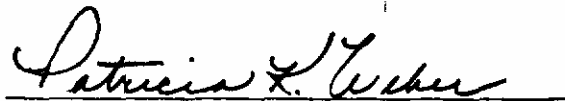
(SEAL)


M. F. Vanik, Mayor

Approved as to form:


Lee Kraft, City Attorney

Attest:


Patricia K. Weber, City Clerk

Published December 14, 1976