

0165-ORD
06/19/98

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5074

AN ORDINANCE regarding the Bellevue Criminal Code; amending Bellevue City Code 10A.90.050, Consumption of Liquor by Minor; 10A.90.060, Supplying Liquor to Minors; 10A.90.070, Penalty for Violation of BCC 10A.90.050 and 10A.90.060; 10A.56.010, Definitions; 10A.56.050 Theft - Generally; 10A.56.140, Possessing Stolen Property - Definition - Credit Cards, presumption; 10A.56.170, Possessing Stolen Property; repealing 10A.56.060, Unlawful Issuance of Bank Checks or Drafts; adding new sections 10A.56.060, Unlawful Issuance of Checks or Drafts; 10A.56.190, Obscuring the Identity of Computer Hardware; 10A.60.050, False Statement by Deposit Account Applicant; 10A.90.072, Unlawful Purchase or Consumption of Liquor by Inebriated Persons; 10A.90.076, Possession of Tobacco by Minors; 10A.90.122, Sale or Gift of Drug Paraphernalia; and 10A.88.085, Sex Offender Failure to Register, 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 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.90.050, Consumption of Liquor by Minor, is amended to read as follows:

10A.90.050 Consumption of liquor by minor.

(1) It is unlawful for any person under the age of 21 years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(a) It is unlawful for a person under the age of 21 years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that the person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (a) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (c) or (d) of this section.

(b) BCC 10A.90.060 and (1) of this section do not apply to liquor given or permitted to be given to a person under the age of 21 years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of 21 years on any premises licensed under chapter 66.24 RCW.

(c) This section does not apply to liquor given for medicinal purposes to a person under the age of 21 years by a parent, guardian, physician or dentist.

(d) This section does not apply to liquor given to a person under the age of 21 years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(e) Conviction or forfeiture of bail for a violation of this section by a person under the age of 21 years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of 21 years.

Section 2. Bellevue City Code 10A.90.060, Supplying Liquor to Minors, is amended to read as follows:

10A.90.060 Supplying Liquor to Minors.

It is unlawful for any person to sell, give or otherwise supply liquor to any person under the age of 21 years, or to permit any person under 21 years of age to consume liquor on or in his or her premises, or any premises under his or her control, except as provided in BCC 10A.90.050. For the purposes of this chapter, "premises" includes real property, houses, buildings, trailers and other structures, and motor vehicles and watercraft.

Section 3. Bellevue City Code 10A.90.070, Penalty for Violation of BCC 10A.90.050 and 10A.90.060, is amended to read as follows:

10A.90.070 Penalty for Violation of BCC 10A.90.050 and 10A.90.060.

Violation of BCC 10A.90.050 or BCC 10A.90.060 is a gross misdemeanor punishable as provided for in Chapter 9A.20 RCW, as now or hereafter amended, by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.

Section 4. Bellevue City Code 10A.56.010, Definitions, is amended to read as follows:

10A.56.010 Definitions.

The following definitions are applicable in this chapter unless the context otherwise requires:

A. "Appropriate lost or misdelivered property or services" means obtaining or extending control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as the nature or amount of the property;

B. "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of ...," "owned by ...," or other markings or words identifying ownership.

C. "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

D. "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

E. "Deception" occurs when an actor knowingly:

1. Creates or confirms another's false impression which the actor knows to be false, or

2. Fails to correct another's impression which the actor previously has created or confirmed, or

3. Prevents another from acquiring information material to the disposition of the property involved, or

4. Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record, or

5. Promises performance which the actor does not intend to perform or knows will not be performed;

F. "Deprive," in addition to its common meaning, means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

G. "Merchandise pallet" means a wood or plastic carrier designed or manufactured as an item on which products can be placed prior to or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of ...," "owned by ...," or other markings or words identifying ownership;

H. "Obtain control over," in addition to its common meaning, means:

1. In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property, or

2. In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

I. "Wrongfully obtains" or "exerts unauthorized control" means:

1. To take the property or services of another, or

2. Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his own use or to the use of any person other than the true owner or person entitled thereto;

J. "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

K. "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

L. "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for

use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

M. "Stolen" means obtained by theft, robbery, or extortion;

N. Value.

1. "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

2. Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

a. The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

b. The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

c. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

3. Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of the value not exceeding \$250.00. (Ord. 5018 § 1, 1997; Ord. 3516 §§ 11, 20, 1985.)

Section 5. Bellevue City Code 10A.56.050, Theft - Generally, is amended to read as follows:

10A.56.050 Theft - Generally.

A. A person is guilty of theft if he commits theft of property or services which (1) does not exceed \$250.00 in value, or (2) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

B. Theft is a gross misdemeanor.

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Section 6. Bellevue City Code 10A.56.140, Possessing Stolen Property - Definition - Credit Cards, presumption, is amended to read as follows:

10A.56.140 Possessing Stolen Property - Definition - Credit Cards, presumption.

A. "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen or consciously disregarding a substantial risk that it has been stolen, and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

B. "Receiving" means acquiring possession, control or title, or lending on the security of the property.

C. The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

D. When a person has in his or her possession, or under his or her control, stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates, as defined in BCC 10A.56.010, he or she is presumed to know that they are stolen. This presumption is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices, merchandise pallets, or beverage crates was without knowledge that they were stolen.

Section 7. Bellevue City Code 10A.56.170, Possessing Stolen Property, is amended to read as follows:

10A.56.170 Possessing Stolen Property.

A. A person is guilty of possessing stolen property if he possesses (1) stolen property which does not exceed \$250.00 in value, or (2) ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

B. Possessing stolen property is a gross misdemeanor.

Section 8. Existing BCC 10A.56.060, Unlawful Issuance of Bank Checks or Drafts, is repealed, and a new section 10A.56.060, Unlawful Issuance of Checks or Drafts is hereby added to the Bellevue City Code, to read as follows:

10A.56.060 Unlawful Issuance of Checks or Drafts.

(1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he has not sufficient funds in, or credit with said bank or other depository, to meet said check or draft, in full upon its presentation, shall be guilty of unlawful issuance of a bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor said check, and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing said check or draft shall be guilty of unlawful issuance of a bank check.

(3) When any series of transactions which constitute unlawful issuance of a bank check would, when considered separately, constitute unlawful issuance of a bank check in the amount of \$250.00 or less because of value, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining whether the unlawful issuance of a bank check is to be punished as a class C felony or as a gross misdemeanor under this section.

(4) Unlawful issuance of a bank check in an amount of \$250.00 or less is a gross misdemeanor and shall be punished as follows:

- (a) The court shall order the defendant to make full restitution;
- (b) The defendant need not be imprisoned, but the court shall impose a minimum fine of \$500.00. Of the fine imposed, at least \$50.00 shall not be suspended or deferred.

Upon conviction for a second offense within any twelve-month period, the court may suspend or defer only that portion of the fine which is in excess of \$500.00.

Section 9. A new section 10A.56.190, Obscuring the Identity of Computer Hardware, is hereby added to the Bellevue City Code to read as follows:

10A.56.190 Obscuring the Identity of Computer Hardware.

It is a gross misdemeanor for:

(1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware that is received as a trade-in or in exchange on the purchase of other computer hardware of greater value. In addition, a retailer shall not accept any computer hardware as a trade-in or in exchange on the purchase of other computer hardware of greater value where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware has been removed, altered or obliterated;

(2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under Chapter 62A.2 RCW; or

(3) Any person to knowingly violate any other provision of Chapter 134, Laws of 1998.

(4) Subsections (1) through (3) do not apply to trade-in or exchange of computers, or computer hardware, between consumers and retailers, or their branch facilities, when the computer or computer hardware was originally purchased from that same retailer.

Section 10. A new section 10A.60.050, False Statement by Deposit Account Applicant, is hereby added to the Bellevue City Code, to read as follows:

10A.60.050 False Statement by Deposit Account Applicant.

(1) It is a gross misdemeanor for a deposit account applicant to knowingly make any false statement to a financial institution regarding:

- (a) The applicant's identity;
- (b) Past convictions for crimes involving fraud or deception; or
- (c) Outstanding judgments on checks or drafts issued by the applicant.

(2) Each violation of subsection (1) of this section after the third violation is a class C felony punishable as provided in chapter 9A.20 RCW.

Section 11. A new section 10A.90.072, Unlawful Purchase or Consumption of Liquor by Inebriated Persons, is hereby added to the Bellevue City Code, to read as follows:

10A.90.072 Unlawful Purchase or Consumption of Liquor by Inebriated Persons.

No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the State of Washington Liquor Control Board. A violation of this section is an infraction punishable by a fine of not more than five hundred dollars.

A defendant's intoxication may not be used as a defense in an action under this section.

Section 12. A new section 10A.90.076, Possession of Tobacco by Minors, is hereby added to the Bellevue City Code to read as follows:

10A.90.076 Possession of Tobacco by Minors.

A person under the age of 18 who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction, as defined in RCW 7.80.120 (1)(c) as now or hereafter amended, and is subject to a maximum monetary penalty and the default amount of fifty dollars, not including statutory assessments, or participation in up to four hours of community service, or both. The court may also require participation in a smoking cessation program.

This provision does not apply if a person under the age of 18, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

Section 13. A new section 10A.90.122, Sale or Gift of Drug Paraphernalia, is hereby added to the Bellevue City Code, to read as follows:

10A.90.122 Sale or Gift of Drug Paraphernalia

(1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class 1 civil infraction, as defined in RCW 7.80.120 (1)(a) as now or hereafter amended, and is subject to a maximum monetary penalty and the default amount of two hundred fifty dollars, not including statutory assessments. For purposes of this Section, "drug paraphernalia" means all equipment, products and materials of any kind as set forth in BCC 10A.90.120.

(2) 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.

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(3) Nothing in subsection (1) of this Section prohibits legal distribution of injection syringe equipment through public health and community-based HIV prevention programs.

Section 14. A new section 10A.88.085, Sex Offender Failure to Register, is hereby added to the Bellevue City Code, to read as follows:

10A.88.085 Sex Offender Failure to Register.

Any adult or juvenile required by RCW 9A.44.130 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 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 15. This ordinance shall take effect and be in force thirty (30) days after passage by the City Council.

PASSED by the City Council this 6th day of July, 1998, and signed in authentication of its passage this 6th day of July, 1998.

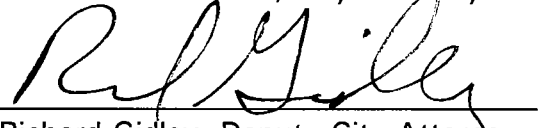
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Mike Creighton, Mayor

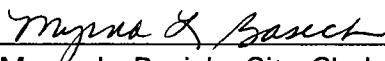
Approved as to form:

Richard L. Andrews, City Attorney



Richard L. Andrews, City Attorney

Attest:



Myrna L. Basich, City Clerk

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