

Ordinance No.

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON AMENDING CHAPTER 9.40 OF THE OLYMPIA MUNICIPAL CODE RELATING TO PROPERTY CRIMES; SPECIFICALLY REPEALING SECTIONS 9.40.040 AND 9.40.050 OF THE OLYMPIA MUNICIPAL CODE AND ADOPTING BY REFERENCE SECTIONS 9A.52.100, 9A.56.050, AND 9A.56.170 OF THE REVISED CODE OF WASHINGTON

WHEREAS, there is an inherent interest in protecting the public's property; and

WHEREAS, vehicle prowling, theft, and receiving stolen property are outdated provisions within the City's code, which do not allow enhanced sentencing for subsequent crimes of the same type and fail to appropriately value property for a misdemeanor charge; and

WHEREAS, adopting the state statutes will correct such deficiencies; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington State Constitution and any other applicable authority;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC 9.40. Olympia Municipal Code Chapter 9.40 is hereby amended to read as follows:

**Chapter 9.40
OFFENSES AGAINST PROPERTY**

9.40.000 Chapter Contents

Sections:

- 9.40.010 Definitions.
- 9.40.020 Theft. State statutes adopted by reference.
- 9.40.030 Theft on mercantile premises--Reasonable detention.
- ~~9.40.040 Receiving stolen property.~~
- ~~9.40.050 Vehicle prowling.~~
- 9.40.060 Unlawful issuance of bank check.
- 9.40.070 Criminal impersonation.
- 9.40.080 Criminal trespass.
- 9.40.090 Property damage.
- 9.40.095 Graffiti.
- 9.40.100 Bill posting and distribution--Commercial advertising.
- 9.40.115 Unlawful Balloon Releasing.
- 9.40.110 Disposal of litter--Penalty for violation.

9.40.120 Interfering with utility apparatus or public fountains.

9.40.130 Auction sales.

9.40.140 False advertising.

9.40.010 Definitions

For the purpose of this chapter certain words and terms are defined as follows:

A. "Building" means any structure, vehicle, railway car, aircraft or watercraft used for overnight lodging of persons or for carrying on of business therein.

B. "Credit card" means any instrument or device, whether incomplete, revoked or expired, whether known as a credit card, credit plate, charge plate, courtesy card, or by any other name, issued with or without fee for the use of the cardholder in obtaining money, goods, services or anything else of value, including satisfaction of a debt or the payment of a check drawn by a cardholder, either on credit or in consideration of an undertaking or guaranteed by the issuer.

C. "Damage," for the purpose of Section 9.40.090, in addition to its ordinary meaning, includes cutting, marring, injuring, defacing, spoiling, breaking or destroying any fence, sidewalk, house, building, tree, plant or other property, public or private, within the city, whether real or personal property, by any means, including the attachment of any handbills, posters or newspapers thereto; or without municipal authority, to deface, mutilate, tear down, rearrange, or destroy any signboard, street sign, public notice, poster, or post within the corporate limits of the city. Damage also includes any diminution in the value of property as a consequence of an act.

D. "Deception" occurs when an actor knowingly:

1. Creates or confirms another's false impression which the actor does not believe to be true; or
2. Fails to correct another's false 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. Promises performance which the actor does not intend to perform or knows will not be performed;
or
5. Uses a credit card without authorization or which he knows to be stolen, forged, revoked or canceled.

E. "Obtained" 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 benefit of the obtainer or another.

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

G. "Service" includes but is not limited to labor, professional service, transportation service, the supplying of hotel or motel 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.

H. "Stolen" means property obtained by theft, robbery, or extortion.

I. "Wrongful obtains" or "exerts unauthorized control" means to take the property or services of another and includes but is not necessarily limited to conduct known as "common law larceny."

9.40.020 Theft

~~A.—A person is guilty of theft if, with regard to property or services of two hundred fifty dollars or less in value, he:~~

~~1.— Wrongfully obtains or exerts unauthorized control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or~~

~~2.— By aid of deception, he obtains control over the property or services of another or the value thereof, with intent to deprive him of such property or services; or~~

~~3.— Appropriates lost or misdelivered property or services of another, or the value thereof, with intent to deprive him of such property or services.~~

~~B.— In any prosecution under this section, it is an affirmative defense that the property or services were openly obtained under a claim of title made in good faith, even though the claim be untenable.~~

~~C.— Theft is a gross misdemeanor.~~

9.40.020 State statutes adopted by reference.

The following sections of the Revised Code of Washington (RCW), as they appear now or are hereafter amended, are hereby adopted by reference as though fully set forth in this chapter:

RCW 9A.52.100 – Vehicle Prowling in the Second Degree

RCW 9A.56.050 – Theft in the Third Degree

RCW 9A.56.170 – Possessing Stolen Property in the Third Degree

9.40.030 Theft on mercantile premises-reasonable detention

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 is 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 has 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" includes, but is not limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" means 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.

9.40.040 Receiving stolen property

A. — A person is guilty of theft if he receives, possesses, retains or disposes of property of another, having value of two hundred fifty dollars or less, knowing that it has been stolen or consciously disregarding a substantial risk that it has been stolen, unless the property is received, retained or disposed of with purpose to restore to the owner.

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

C. — Receiving stolen property is a gross misdemeanor.

9.40.050 Vehicle prowling

A. — A person is guilty of vehicle prowling if, with intent to commit a crime against a person or property therein, he enters or remains in a vehicle not his own.

B. — Vehicle prowling is a gross misdemeanor.

9.40.060 Unlawful issuance of bank check

A. Any person who, with intent to defraud, makes, or draws, or utters or delivers any check, draft or order for the payment of money in an amount of two hundred fifty dollars or less upon any bank or other depository, knowing at the time of such drawing or delivery that the maker or drawer has not sufficient funds in, or credit

with such bank or depository, in full upon its presentation, is guilty of unlawful issuance of a bank check. The word "credit" as used in this section shall be construed to mean an arrangement or understanding with the bank for the payment of such check or draft or order. The uttering or delivery of such a check, draft or order to another person, firm or corporation without such funds or credit to meet the same shall be prima facie evidence of an intent to defraud.

B. Unlawful issuance of a bank check is a gross misdemeanor.

9.40.070 Criminal impersonation

A person is guilty of criminal impersonation if he:

A. Assumes a false identity and does an act in his assumed character with the intent to defraud another or for any other unlawful purpose; or

B. Pretends to be a representative of some person or organization and does an act in his pretended capacity with the intent to defraud another or for some other unlawful purpose.

9.40.080 Criminal trespass

A. A person is guilty of criminal trespass if he or she knowingly enters or remains unlawfully in or upon the premises of another.

B. "Enter or remain unlawfully" means an unlicensed, uninvited or otherwise unprivileged entry into or remaining in or upon premises. A license or privilege to enter or remain in public premises which are only partly open to the public is not a license or privilege to enter or remain in that part of the premises which are not open to the public.

C. In any prosecution under this section, it is an affirmative defense that:

1. The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him or her to enter or remain; or

2. The actor was attempting to serve legal process, which includes any document required or allowed to be served upon persons or property by any statute, ordinance, governmental rule or regulation, or court order, excluding delivery by the mails of the United States. This defense is available only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process.

D. If the court finds that the accused committed criminal trespass pursuant to the provisions of this section and if the court receives sufficient evidence that the acts committed leading to that finding were intentionally targeted against the victim or victims in substantial part because of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or his/her/their mental, physical or sensory disability, or

the accused's perception thereof, the court shall impose a minimum fine of not less than five hundred dollars and a minimum jail sentence of not less than five days for each such offense. Neither the mandatory minimum jail sentence nor the mandatory minimum fine shall be suspended or deferred, nor shall the jail sentence be served by alternative means.

E. Any person convicted under this section where the court receives sufficient evidence that the person's acts were targeted as described in subsection (D) above shall be guilty of a gross misdemeanor.

9.40.090 Property damage

A. A person is guilty of property damage if the person intentionally causes physical damage to the property of another.

B. If the court finds that the accused committed criminal trespass pursuant to the provisions of this section and if the court receives sufficient evidence that the acts committed leading to that finding were intentionally targeted against the victim or victims in substantial part because of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or his/her/their mental, physical or sensory disability, or the accused's perception thereof, the court shall impose a minimum fine of not less than five hundred dollars and a minimum jail sentence of not less than five days for each such offense. Neither the mandatory minimum jail sentence nor the mandatory minimum fine shall be suspended or deferred, nor shall the jail sentence be served by alternative means.

C. Any person convicted under this section where the court receives sufficient evidence that the person's acts were targeted as described in subsection (B) above shall be guilty of a gross misdemeanor.

D. "Physical damage," in addition to its ordinary meaning, includes the total or partial alteration, damage, obliteration or erasure of records, information, data, computer programs or their computer representation, which are recorded for use in computers or the impairment, interruption or interference with the use of such records, information, data or computer programs; or the impairment, interruption or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property, real or personal, as a consequence of an act.

E. Property damage is a gross misdemeanor punishable as described in OMC 9.64.010.

9.40.095 Graffiti.

A. A person is guilty of graffiti if, without prior consent of the owner or owner's agent, the person intentionally writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person.

B. Graffiti is a gross misdemeanor punishable as described in OMC 9.64.010.

9.40.100 Bill posting and distribution –Commercial advertising

It is unlawful for any person to post or attach any bills, handbills, posters, newspapers or other papers of a purely commercial advertising nature on any post, fence, tree, building or other structure, except upon billboards or other structures erected for that purpose. It is further unlawful to hand out, distribute, or scatter any such commercial advertising upon the streets, alleys or other public places of the city, or to throw them in the yards of the city, or to place them in or upon automobiles without the consent of the owner.

9.40.110 Disposal of litter –Penalty for violation

No person shall throw, drop, deposit, discard, or otherwise dispose of litter, as that term is defined in RCW 70.93.030 (4), upon any public property within the city or upon private property within the city not owned by him or in the waters of the city whether from a vehicle or otherwise, including but not limited to any sidewalk, street, alley, highway or park, except:

- A. When such property is designated by the city for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose;
- B. Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters;
- C. Any person violating any provisions of this section is guilty of a misdemeanor and the fine or bail forfeiture for such violation shall not be less than ten dollars for each offense, and, in addition thereto, in the sound discretion of the judge, such person may be directed by the judge to pick up and remove from any public place or private property, with prior permission of the legal owner, upon which it is established by competent evidence that such person has deposited litter.

9.40.115 Unlawful Balloon Releasing

It is unlawful to intentionally release or cause to be released any balloon, with or without attachments, any part of which balloon or its attachments are made from a non biodegradable material, and which balloon is filled with a lighter-than-air gas. Anyone convicted of this misdemeanor shall be punished by a fine of no more than \$100.

9.40.120 Interfering with utility apparatus or public fountains

- A. It is unlawful for any person to cut, alter, change, remove, disconnect or connect with, or in any manner interfere, meddle or tamper with any water main, pipe, stopcock on a meter hydrant, pump or conduit, or any gas pipe, main or meter, or any electrical wire, cable or conduit owned or used by the city or by any private owner, without the permission or consent of the proper city officials or of the private owner or owners.

B. It is unlawful to obstruct, divert, hinder, tamper with, pollute, or interfere with any public spring or fountain within the city.

9.40.130 Auction sales

A. Record of Facts. In addition to the requirements of RCW Chapter 18.12, before an auction sale is held within the city, the auctioneer or the owner of the merchandise to be sold shall provide the city clerk-treasurer a full and complete record in ink of the following facts concerning such property:

1. A description of each and every article of goods, wares and merchandise to be sold;
2. The name and the address of the owner of such property, together with the name and residence of the person, firm or corporation from whom such property was purchased;
3. As and when such property is sold at auction, a complete and detailed list shall be kept showing the date, article, and price paid for such article, and to whom it was sold;
4. Such records shall be kept at the place of business of any auctioneer conducting a sale within the city for a period of at least two years after the date of holding such sale, and shall be subject to inspection by the police of the city.

B. False Representation Unlawful. No auctioneer shall make any false representation, or permit to be made any false representation over his name or by those within his employ, as to the character, condition, value, or present or previous ownership of any property offered for sale, nor substitute any other article for an article sold, nor make any false statement as to the name and amount for which any article is sold, and shall not permit any person to act as his accomplice or capper for the purpose of making mock bids at any auction.

C. Time Limit. All auction sales shall close not more than ten days from the date of the beginning of such sale, and no auction shall be held by any merchant more often than once a year within the city.

D. Exceptions. The provisions of this section shall not apply to auctions of real estate, livestock, perishable fruits and produce, nor to the auction of a complete stock as a whole, nor to sales by judicial officers or by public officers held in the manner prescribed by law, nor to sales of used household furniture and effects, nor to sales by an executor, administrator, or guardian.

E. Notice that Purchases may be Returned. With regard to the sale of jewelry or appliances as those terms are defined in RCW 18.12.010, the auctioneer shall cause to be displayed in a prominent place on the premises where the auction is being conducted a notice allowing the return of an item in the same condition as when purchased, for the amount paid, if returned within forty-eight hours from the time of purchase. The notice shall be of sufficient size as to be readily discernible by the bidders.

9.40.140 False advertising

A. The publishing, circulating or placing before the public, or causing directly or indirectly to be made, published or circulated, or placed before the public in the city, in a newspaper, handbill, poster, circular, pamphlet, or other notice or publication, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertising contains any assertion, representation, or statement of fact which is untrue, deceptive or misleading, with the intent to increase the consumption of, or to induce the public in any manner to enter into any obligation relating to, or to acquire any interest or title in such merchandise, securities or services shall be considered false advertising.

B. It is unlawful for any person, firm or corporation to do or carry on, or to permit to be done or carried on, any false advertising in the city; provided, however, that this shall not apply to the owner or publisher of a newspaper publishing such advertisements in good faith and without knowledge of the falsity thereof.

Section 3. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of the provisions to other persons or circumstances shall remain unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This ordinance shall take effect five (5) days after publication, as provided by law.


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

PASSED: 06/07/2016

APPROVED: 06/07/2016

PUBLISHED: 06/09/2016