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City Council

Approval of an Ordinance Updating and Amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare

Agenda Date: 8/23/2022
Agenda Item Number: 4.I
File Number: 22-0769

Type: ordinance **Version:** 2 **Status:** Passed

Title

Approval of an Ordinance Updating and Amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve on second reading an ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare.

Report

Issue:

Whether to approve an ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare by incorporating by reference certain state crimes in Title 9 RCW, Crimes and Punishments, and Title 9A RCW, the Washington Criminal Code, and by amending certain chapters and sections of Title 9 OMC.

Staff Contact:

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Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and Analysis did not change from first to second reading.

In order to give the City the authority to prosecute a state statute, the statute must be adopted and incorporated by reference into the Olympia Municipal Code (OMC).

A comprehensive review of OMC Title 9 - Public Peace, Morals and Welfare (Title 9 OMC) has identified needed updates and amendments. The proposed ordinance updates the OMC by

incorporating by reference certain crimes in Title 9 RCW, Crimes and Punishments, and Title 9A RCW, the Washington Criminal Code, and amends certain chapters and sections of Title 9 OMC as described below.

Section 1 - OMC Chapter 9.04 - Aiding or Abetting Crime. Adopts:

- RCW 9A.28.020 - Criminal Attempt (attempting a crime).
- RCW 9A.28.030 - Criminal Solicitation (soliciting or enticing someone to commit a crime).
- RCW 9A.28.0940 - Criminal Conspiracy (working in concert to commit a crime).
- All Class C felony crimes. By adopting the state versions of criminal attempt, criminal solicitation, and criminal conspiracy, the City can enforce attempted Class C felonies set forth in chapter 9A.28 RCW that are declined by the Thurston County Prosecutor's Office and then returned to the City to be prosecuted as a Gross Misdemeanor.

As the heavy workload in the Thurston County Prosecutor's office continues, a number of felony cases are declined and returned to the City. This proposed amendment would allow the City to enforce those felonies as a Gross Misdemeanor.

Section 2 - OMC Chapter 9.08 - Offenses Against Government.

- Adopts RCW 9A.44.132 - Failure to Register as a Sex Offender or Kidnapping Offender. Currently, only conviction of a Gross Misdemeanor sex offense requires registration. Adoption of this crime would permit the City to enforce that registration requirement.

Section 3 - OMC 9.16 - Offenses Against Public Peace.

- Repeals OMC 9.16.050(E) - Offenses in Public - Crime of Riot and replaces it by adoption of RCW 9A.84.010 - Criminal Mischief.
- The crime of Riot pointed to a definition no longer found in the RCW. The crime of Criminal Mischief has the same elements as the old crime of Riot, but with a new name. This is an important tool for the Olympia Police Department when managing demonstrations or public assemblies that have escalated into unlawful behavior under state law.
- Repeals OMC 9.16.100 - .170, removing limitations imposed on Teen Dance Clubs. Sections are outdated; no current businesses within the City meet this definition.
- Amends OMC 9.16.180 - Pedestrian Interference to make the mental intent element consistent throughout the crime.

Section 4 - OMC 9.20.010 - Crimes Against Persons - State Statutes Adopted by Reference.

- Adopts the crimes of Custodial Interference, Criminal Mistreatment, Abandonment of a Dependent Person, Leaving a Child With a Sex Offender, Sexual Misconduct, Disclosing of Intimate Images, and the Special Allegation of Sexual Motivation. Cases alleging crimes of Custodial Interference, Criminal Mistreatment, and Disclosing Intimate Images currently occur a few times a year for review by City Prosecutors. A special allegation is a modifier to another crime, in this case it alleges that the criminal was motivated with sexual gratification in the

execution of the crime. This occurs most often in cases of Assault where someone is grabbed or touched in an intimate location.

Section 5 - OMC 9.36 - Liquor Offenses.

- Amended by adopting various sections of Title 66 RCW - Alcoholic Beverage Control as they apply to liquor. The wording between the OMC and RCW versions are nearly identical, but to avoid a change in State policy on liquor, this adoption should be made.

Section 6 - OMC 9.40 - Offenses Against Property.

- Repeals OMC 9.40.110 - Disposal of Litter - Penalty of Violation and adopts RCW 70A.200 060 - Littering Prohibited - Penalties - Litter Cleanup Restitution Payment.
- Adopts the crimes of Possession of Another's ID (identification), Computer Trespass, Spoofing, and Electronic Data Tampering. In a society that is very dependent on smart phones, these crimes are starting to occur by domestic violence offenders in an effort to monitor and control their victims.

Section 7 - OMC 9.44 - Offenses By or Against Juveniles.

- Adopts RCW 9.68A.090 Crime of Communication with a Minor for Immoral Purposes.
- Creates the crime of Assault of a Child in the Fourth Degree. In the RCW, Assault of a Child in the First, Second, and Third degree are the same crimes with the same penalties as Assault in the First, Second, and Third Degrees. The State does not have a crime for Assault of a Child in the Fourth Degree. The purpose of this crime is to better inform prosecutors, judges, and anyone who has the authority and need to see a person's criminal history. For instance, if an offender is being sentenced for Assault of a Child in the Second Degree, seeing this crime on the offender's criminal history will have an effect upon the terms of sentencing by the court.

Section 8 - OMC 9.48.170 - Weapons and Fireworks - State Statutes Adopted by Reference.

- Updates OMC 9.48.170 - State Statutes Adopted by Reference related to weapons and fireworks.
- Adopts RCW 9.41.305 Open Carry of Weapons Prohibited on State Grounds and Municipal Buildings. RCW 9.41.305 was amended by the last legislative session to allow local governments to prohibit the open carry of firearms in municipal buildings that are used by the governing body of the local government, or any location used by the governing body for public meetings or hearings by local government. There are requirements as to posting signs of the prohibition.
- Adopts RCW 9A.49.020 and .030 Unlawful Discharge of a Laser in the First and Second Degrees and RCW 77.15.460 Possession of a Loaded Shotgun or Rifle in a Vehicle. The Laser offenses are crimes that were seen during demonstrations and public assemblies when persons used lasers against the eyes of Olympia Police officers.

Section 9 - OMC 9.62 - Domestic Violence and Protection Orders.

- Revises the adoption of RCW crimes for violations of protection orders. In ESSHB 1320, the legislature moved the civil protection orders within the RCW to Title 7.105, effective July 1,

2022. The City's prosecutors are currently unable to enforce those violations. This section also revises the Domestic Violence in the Presence of a Child ordinance to better clarify that it carries a mandatory minimum sentence and fine for any Domestic Violence crime in the presence of a child, as well as allows for the charging of a separate crime for committing a domestic violence crime in the presence of a child.

Neighborhood/Community Interests (if known):

There is an inherent interest in protecting the public's safety and property, protecting children from violence, and appropriately holding offenders accountable for their conduct.

Options:

1. Approve on second reading the ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare.
2. Approve on second reading the ordinance updating and amending Olympia Municipal Code Title 9 - Public Peace, Morals and Welfare with specific modifications.
3. Do not approve the ordinance. If the updated and amended ordinance is not approved, the City's prosecutors will be unable to enforce violations of civil protection orders. It is possible the Thurston County Prosecutor's Office may be able to assist prosecuting City crimes based upon the recent Interlocal Agreement, but it is not desirable given the County Prosecutor's current case backlog.

Financial Impact:

There is no financial impact related to this action.

Attachments:

Ordinance