

ORDINANCE NO. 1335

CITY OF LACEY

AN ORDINANCE UPDATING CERTAIN PROVISIONS OF THE LACEY MUNICIPAL CODE RELATING TO CRIMINAL OFFENSES, AMENDING SECTIONS 9.08.010, 9.12.050, 9.12.065, 9.12.072, 9.28.040, 9.28.050, 9.28.060, 9.28.120, 9.40.030, 9.40.040, 9.40.080, 9.44.010 AND 9.44.020 AND ADDING NEW SECTIONS 9.12.068, 9.44.130 AND 9.44.140 AND APPROVING A SUMMARY FOR PUBLICATION.

WHEREAS, the legislature has made certain changes in the criminal laws in the State of Washington and it would be advantageous for the City of Lacey to amend similar provisions in the Lacey Municipal Code,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, as follows:

Section 1. Section 9.08.010 of the Lacey Municipal Code is hereby amended to read as follows:

9.08.010 Criminal Attempt.

- A. A person is guilty of an attempt to commit an offense if, with intent to commit a specific offense, under this title, or the Revised Code of Washington, such person does any act which is a substantial step toward the commission of that offense.
- B. It is no defense to a prosecution for an attempt that the offense charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission.
- C. An attempt to commit an offense is a misdemeanor when the crime attempted is a gross misdemeanor or misdemeanor. Attempt to commit an offense is a gross misdemeanor when the crime attempted is a class C felony under the Revised Code of Washington.

Section 2. Section 9.12.050 of the Lacey Municipal Code is here by amended to reach as follows:

9.12.050 Intimidating Phone Calls or Electronic Communication. A person is guilty of a gross misdemeanor if such person, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call or electronic communication to such other person or a third party:

- A. Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or

- B. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or
- C. Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

Notwithstanding the gross misdemeanor classification called for herein, should state law provide for a higher grade offense for multiple violations of the acts prohibited by this section, said state law shall prevail. For purposes of this section, “electronic communication” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. “Electronic communication” includes but is not limited to electronic mail, internet-based communications, pager service, and electronic text messaging.

Section 3. Section 9.12.065 of the Lacey Municipal Code is hereby amended to read as follows:

9.12.065 Violation of Sections 9.12.050 and 9.12.060. Any offense committed in violation of Section 9.12.050 or 9.12.060 may be deemed to have been committed where the conduct occurred or at the place from which the threat or threats or telephone call or electronic communication was made or at the place where the threat or threats or telephone call or electronic communication was received.

Section 4. There is hereby added to the Lacey Municipal Code a new section 9.12.068 to read as follows:

9.12.068 Stalking.

(1) A person commits the crime of stalking if, without lawful authority and under the circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances: and

(c) The stalker either:

(i) intends to frighten, intimidate, or harass the person; or

(ii) knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2) (a) It is not a defense to the crime of stalking under subsections (1) (c) (i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1) (c) (ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is licensed private investigator acting within the capacity of his or her license as provided in chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(c) "Repeatedly" means on two or more separate occasions.

Section 5. Section 9.12.072 of the Lacey Municipal Code is hereby amended to

read as follows:

9.12.072 Harassment Crimes Defined. The term "harassment" as used in Section 9.12.070, may include, but is not limited to any of the following crimes:

- A. Simple assault (LMC 9.12.010)
- B. Reckless endangerment (LMC 9.12.020)
- C. Coercion (LMC 9.12.030)
- D. Custodial interference (LMC 9.12.040)
- E. Telephone intimidation or harassment (LMC 9.12.050)
- F. Harassment (Lacey Municipal Code 9.12.060)
- G. Criminal trespass in the first degree (LMC 9.28.080)
- H. Criminal trespass in the second degree (LMC 9.28.090)
- I. Malicious mischief in the third degree (LMC 9.28.020)
- J. Malicious harassment (RCW 9A.36.080)

- K. Assault in the first degree (RCW 9A.36.010)
- L. Assault in the second degree (RCW 9A.36.020)
- M. Extortion in the first degree (RCW 9A.56.120)
- N. Extortion in the second degree (RCW 9A.56.130)
- O. Burglary in the first degree (RCW 9A.52.020)
- P. Burglary in the second degree (RCW 9A.52.030)
- Q. Malicious mischief in the first degree (RCW 9A.48.070)
- R. Malicious mischief in the second degree (RCW 9A.48.080)
- S. Kidnapping in the first degree (RCW 9A.40.020)
- T. Kidnapping in the second degree (RCW 9A.40.030)
- U. Unlawful imprisonment (RCW 9A.40.040)
- V. Rape in the first degree (RCW 9A.44.040)
- W. Rape in the second degree (RCW 9A.44.050)
- X. Rape in the third degree (RCW 9A.44.060)
- Y. Indecent liberties (RCW 9A.44.100)
- Z. Violation of the provisions of a restraining order temporary, permanent, or final ~~or other~~ protective order issued by a court pursuant to Title 26, 7.90, 9A.46, 10.14, 10.99 Revised Code of Washington, including the provisions of Chapter 263, Laws of 1984.
- AA. Violation of the provisions of a protective or no-contact order issued by a court pursuant to Section 9.12.070 of the Lacey Municipal Code.
- (BB) Rape of a child in the first degree (RCW 9A.44.073);
- (CC) Rape of a child in the second degree (RCW 9A.44.076);
- (DD) Rape of a child in the third degree (RCW 9A.44.079);
- (EE) Child molestation in the first degree (RCW 9A.44.083);
- (FF) Child molestation in the second degree (RCW 9A.44.086);
- (GG) Child molestation in the third degree (RCW 9A.44.089);
- (HH) Stalking (RCW 9A.46.110) or LMC 9.12.068;
- (II) Cyberstalking (RCW 9.61.260);
- (JJ) Residential burglary (RCW 9A.52.025);
- (KK) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and

(LL) Unlawful discharge of a laser in the second degree (RCW 9A.49.030).

The term “domestic violence” includes, but is not limited to the commission of any of the crimes listed under the definition of “harassment” when such a crime is committed by one family or household member against another.

The term “family or household members” means spouses, former spouses, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a respondent sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

The term “dating relationship” means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: 1) The length of time the relationship has existed; 2) The nature of the relationship; and 3) The frequency of interaction between the parties.

Section 6. Section 9.28.020 of the Lacey Municipal Code is hereby amended to read as follows:

9.28.020 Malicious Mischief.

A. A person is guilty of malicious mischief if:

1. Such person knowingly and maliciously causes physical damage to the property of another in an amount not exceeding ~~\$250.00~~ \$750.00; or
2. Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, causing physical damage in an amount not exceeding ~~\$250.00~~ \$750.00.

B. For the purposes of this section, “physical damage,” in addition to its ordinary meaning, shall include:

1. Alteration, damage or erasure of records, information, data or computer programs which are electronically recorded for use in computers; and
2. Removal, alteration or defacing of any street sign, legal notice, official bulletin, poster or advertisement without lawful authority or consent of the owner; and
3. Cutting, altering, changing, removing, disconnecting or connecting with any wire, main, pipe, stopcock, meter, hydrant, valve, pump, conduit or cable without lawful authority; and

4. Posting or attaching any bills, handbills, posters or placards upon any post, fence, tree, building or other structure without lawful authority or consent of the owner.
- C. ~~1. Malicious mischief under Section 9.28.020.A.1. is a gross misdemeanor. if the damage to the property is in an amount exceeding \$50.00 otherwise it is a misdemeanor.~~
- ~~2. Malicious mischief under Section 9.28.020.A.2. is a gross misdemeanor.~~

Section 7. Section 9.28.040 of the Lacey Municipal Code is hereby amended to read as follows:

9.28.040 Unlawful Issuance of a Bank Check.

- A. A person is guilty of unlawful issuance of a bank check if, with intent to defraud, such person makes, draws, utters or delivers to another person any check or draft on a bank or other depository for the payment of money in an amount not exceeding ~~\$250.00~~ \$750.00, knowing at the time of such drawing or delivery that such person has not sufficient funds in or credit with such bank or depository to meet such check or draft in full upon its presentation.
- B. The word “credit” as used in this section shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check or draft, and the uttering or delivering 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.
- C. Unlawful issuance of a bank check is a gross misdemeanor.

Section 8. Section 9.28.050 of the Lacey Municipal Code is hereby amended to read as follows:

9.28.050 Theft.

- A. A person is guilty of theft if, with regard to property or services of ~~\$250.00~~ &750.00 or less in value, such person:
 1. Wrongfully obtains or exerts unauthorized control over the property or services of another, or the value thereof, with intent to deprive such person of such property or services; or
 2. By color or aid of deception obtains control over the property or services of another, or the value thereof, with intent to deprive such person of such property or services; or
 3. Appropriates lost or misdelivered property or services of another, or the value thereof, with intent to deprive such person of such property or services; or
 4. Commits any offense defined as a larceny at common law or elsewhere outside of this chapter.

- B. In any prosecution for theft, it shall be a sufficient defense that the property or service was appropriated openly and avowedly under a claim of title preferred in good faith, even though the claim be untenable.
- C. Theft is a gross misdemeanor.

Section 9. Section 9.28.060 of the Lacey Municipal Code is hereby amended to read as follows:

9.28.060 Possessing Stolen Property.

- A. A person is guilty of possessing stolen property if such person receives, retains, possesses, conceals or disposes of stolen property having a value of ~~\$250.00~~ \$750.00 or less, knowing that it has been stolen, and withholds or appropriates the same to the use of any person other than the true owner or person entitled thereto.
- 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 possessing stolen property.
- C. Possessing stolen property is a gross misdemeanor.

Section 10. Section 9.28.120 of the Lacey Municipal Code is hereby amended to read as follows:

9.28.120 Littering.

- A. A person is guilty of littering if such person throws, drops, deposits, discards or otherwise disposes of litter upon any public property within the city or upon private property within the city not owned by such person, or in the waters of the city, whether from a vehicle or otherwise, including but not limited to any highway, park, recreational area, building, road, street or alley, except:
 - 1. 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; or
 - 2. 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.
- B. As used in this section, "litter" means all waste material, including but not limited to, disposable packages or containers.
- C. Penalties.
 - 1. It is a class 3 civil infraction as provided in RCW 7.80 for a person to litter in an amount of less than or equal to one cubic foot.

2. It is a class 1 civil infraction as provided in RCW 7.80 for a person to discard a cigarette, cigar, or other tobacco product that is capable of starting a fire.
3. ~~Littering~~ It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.
4. It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more.
5. In addition to the penalties applicable to this title, a person convicted of littering may be directed in the sound discretion of the court to pick up and remove from any public place or any private property, with prior permission of the legal owner upon which it is established by competent evidence that such person has deposited litter, any or all litter deposited thereon by anyone prior to the date of execution of sentence.

Section 11. Section 9.40.030 of the Lacey Municipal Code is hereby amended to read as follows:

9.40.030 Furnishing Liquor to Minors. A person is guilty of a gross misdemeanor if such person:

- A. Sells, gives or otherwise supplies liquor to any minor; or
- B. Permits a minor to consume liquor on his premises or on any premises under such person's control; or
- C. Invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for such person, or holds out such minor to be over the age of twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or liquor enforcement officer.
- D. For purposes of Section 9.40.030.A and 9.40.030.B, "premises" includes real property, houses, buildings and other structures, and motor vehicles and watercraft.

Provided, however, that Sections 9.40.030.A and 9.40.030.B, shall not apply to liquor given or permitted to be given to a minor by his parent or guardian for beverage or medicinal purposes and consumed in the presence of a parent or guardian; or administered to him by his physician or dentist for medicinal purposes; or used in connection with a religious service and the amount consumed is the minimal amount necessary for the religious service. This provision shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under RCW Chapter 66.24.

Section 12. Section 9.40.040 of the Lacey Municipal Code is hereby amended to read as follows:

9.40.040 Minors Purchasing and Possessing Liquor. It is unlawful for a minor to:

- A. Purchase or attempt to purchase any liquor; or
- B. Acquire, possess or consume any
 - 1. liquor; or
 - 2. be in a public place or in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. Exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either:
 - a. is in possession of or close proximity to a container that has or recently had liquor in it; or
 - b. by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor.
- C. Provided, however, that Section 9.40.040.B shall not apply to liquor given or permitted to be given to a minor by his parent or guardian for beverage or medicinal purposes and consumed in the presence of a parent or guardian; or administered to him by his physician or dentist for medicinal purposes; or used in connection with a religious service and the amount consumed is the minimal amount necessary for the religious service.
- D. ~~The minimum penalty for~~ Violation of Section 9.40.040.A is a misdemeanor. A fine of not less than two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service.

Section 13. Section 9.40.080 of the Lacey Municipal Code is hereby amended to read as follows:

9.40.080 Penalties.

A. Every person guilty of a violation of Lacey Municipal Code 9.40.020 ~~through and~~ 9.40.040(B) is guilty of a misdemeanor.

B. Every person guilty of a violation of Lacey Municipal Code 9.40.030 and 9.40.040(B) is guilty of a gross misdemeanor.

C. Every person guilty of violation of Lacey Municipal Code 9.40.020 through 9.40.040 for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than \$500, or to imprisonment for not more than two months, or both; for a second offense to imprisonment for not more than six months; and for a third or subsequent offense to imprisonment for not more than one year. If the offender convicted of

an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than \$5,000, and for a second or subsequent offense to the penalty of not more than \$10,000, or to forfeiture of its corporate license, or both.

Section 14. Section 9.44.010 of the Lacey Municipal Code is hereby amended to read as follows:

9.44.010 Definitions. As used in this chapter, the terms set forth in RCW Sections 69.41.010, 69.41.210, 69.41.300, 69.50.101, ~~and 69.50.102~~ and 69.51A.010 shall have the meanings set forth in said sections as now enacted or as may hereafter be amended by the Legislature.

Section 15. Section 9.44.020 of the Lacey Municipal Code is hereby amended to read as follows:

9.44.020 Adoption of State Statutes.

(A) Those certain schedules set forth in RCW 69.50.204 through 69.50.212, as the same exist or shall hereafter be amended either by action of the Legislature or by action of the State Board of Pharmacy as authorized in RCW 69.50.201 are hereby adopted by reference as part of this chapter.

(B) Addition of medical conditions by the Washington state medical quality assurance commission and adoption of rules by the Washington state department of health as set forth in RCW 69.51A.070 through 60.51A.080 or by action of the Legislature or the appropriate state board or commission as authorized in the above mentioned statutes are hereby adopted by reference as part of this chapter.

Section 16. There is hereby added to the Lacey Municipal Code a new section 9.44.130 to read as follows:

9.44.130 Medical Marijuana.

(1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any accommodation of any on-site medical use of marijuana in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or in any public place as that term is defined in RCW 70.160.020.

(3) No person shall be entitled to claim the affirmative defense provided in LMC 9.44.140 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway

Section 17. There is hereby added to the Lacey Municipal Code a new section

9.44.140 to read as follows:

9.44.140 Processing Requirements for Medical Marijuana.

(1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.

(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege for such actions.

(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

- (a) Meet all the criteria for status as a qualifying patient or designated provider;
- (b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;
- (c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3) (a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

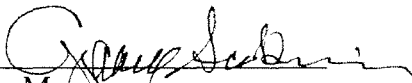
Section 18. The Summary attached hereto is hereby approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY,


WASHINGTON, at a regularly-called meeting thereof, held this 27th day of August,

2009.

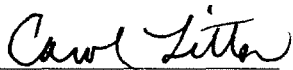
CITY COUNCIL

By: 
Mayor

Approved as to form:


City Attorney

Attest:


City Clerk

SUMMARY FOR PUBLICATION

ORDINANCE NO. 1335

CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on August 27, 2009, Ordinance No. 1335, entitled "AN ORDINANCE UPDATING CERTAIN PROVISIONS OF THE LACEY MUNICIPAL CODE RELATING TO CRIMINAL OFFENSES, AMENDING SECTIONS 9.08.010, 9.12.050, 9.12.065, 9.12.072, 9.28.040, 9.28.050, 9.28.060, 9.28.120, 9.40.030, 9.40.040, 9.40.080, 9.44.010 AND 9.44.020 AND ADDING NEW SECTIONS 9.12.062, 9.44.130 AND 9.44.140 AND APPROVING A SUMMARY FOR PUBLICATION.

The main points of the Ordinance are described as follows:

1. The Ordinance updates certain sections of the Lacey Municipal Code relating to criminal offenses to be consistent with recent action by the state legislature. Significant to these amendments and additions are the following:
 - A. There is added to the existing provisions regarding intimidating phone calls wording which makes illegal the making of intimidating electronic communications.
 - B. The level of property crimes described as misdemeanors and gross misdemeanors and therefore subject to City jurisdiction is increased from \$250.00 to \$750.00.
 - C. The penalties for littering are modified in accordance with state legislation.
 - D. Amendments and new sections have been added relating to the use of medical marijuana to be in compliance with state legislation.
 - E. Other provisions specify that attempting a Class C felony is a gross misdemeanor offense, add the offense of stalking to the Lacey Municipal Code and modify the penalties for alcohol offenses by minors and those persons who provide or distribute alcohol to minors.
2. The Ordinance adopts this Summary for publication.

A copy of the full text of this Ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: August 31, 2009.