

CITY OF LYNNWOOD

DEC 21 2000

ORDINANCE NO. 2164

SCANNED

AN ORDINANCE OF THE CITY OF LYNNWOOD RELATING TO CRIMINAL AND CIVIL PENALTIES, AMENDING SECTIONS 1.01.080, 1.01.085, 7.12.050, 10.02.045, 10.02.065, 10.04.610, 10.08.070, 10.12.800, 10.16.030, 10.16.035, 11.12.010, 11.12.070, 11.12.080. AND 11.12.090 OF THE LYNNWOOD MUNICIPAL CODE, REPEALING SECTIONS 10.02.068, 10.04.890, 10.04.920 AND 11.12.020 OF THE LYNNWOOD MUNICIPAL CODE, AND ADDING NEW SECTIONS TO CHAPTERS 10.02, 11.02 AND 11.44 THERETO

WHEREAS, the maximum penalties provided in the Lynnwood Municipal Code for misdemeanors and gross misdemeanors should, to the extent possible, be set forth in a uniform and consistent manner, and

WHEREAS, certain criminal penalties in the Lynnwood Municipal Code are required to be consistent with the criminal penalties set forth under state statutes for the same misdemeanor offense, and

WHEREAS, the City of Lynnwood is authorized under RCW 35A.11.020 to provide that the violation of certain ordinances constitutes a civil violation subject to monetary penalty,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:

Section 1: Amendment. Section 1.01.080 of the Lynnwood Municipal Code is amended to read as follows:

1.01.080 CLASSIFICATION OF OFFENSES - PENALTIES

- A. Unless otherwise specifically provided in the Lynnwood Municipal Code, any person, firm or corporation, their agents or servants, who violates any of the provisions of the Lynnwood Municipal Code shall be deemed guilty of a misdemeanor. Any criminal violation of the Lynnwood Municipal Code not specifically designated as a gross misdemeanor shall be a misdemeanor.
- B. Every person who is convicted of a misdemeanor under the Lynnwood Municipal Code shall, unless otherwise provided for in this Code, be punished by imprisonment in jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars, or by both such imprisonment and fine.
- C. Every person who is convicted of a gross misdemeanor under the Lynnwood Municipal Code shall, unless otherwise provided for in this Code, be punished by imprisonment in 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.

- D. Each separate day or portion thereof during which any violation of the Lynnwood Municipal Code occurs or continues shall be deemed to constitute a separate and additional offense.

Section 2: Amendment. Section 1.01.085 of the Lynnwood Municipal Code is amended to read as follows:

1.01.085 ENFORCEMENT

- A. Notwithstanding any other provision of the Lynnwood Municipal Code, it is unlawful for any person, firm or corporation, their agents or servants, to violate any of the provisions of the Lynnwood Municipal Code. In the event that any provisions of the code are violated, the administrative authorities of the City of Lynnwood may either prosecute the alleged violator(s) criminally or seek civil redress in a court of competent jurisdiction.

B. RIGHT OF ENTRY

1. Whenever necessary to make an inspection to enforce or determine compliance with provisions of Titles 5, 7, 9, 12, 13, 14, 15, 16, 17, 18, 19 and 21 and Chapters 10.08 and 10.12 of the Lynnwood Municipal Code, or whenever the Lynnwood administrative staff has cause to believe that a violation of any provision of the above said titles of the Lynnwood Municipal Code has been or is being committed, any duly authorized inspector of the Lynnwood administrative staff ("inspector" means a Department Director of the City of Lynnwood or his/her designee) may enter any building, structure, property or portion thereof at reasonable times to inspect the same and perform any duty conferred on the inspector by the Lynnwood Municipal Code.
2. If such building, structure, property or portion thereof is occupied, the inspector shall present identification credentials, state the reason for the inspection and request entry. If consent to enter is not given and if:
 - (a) The inspector has reason to believe that the conditions therein create an imminent and irreparable hazard to the health, safety and welfare of the community, then the inspector shall enter; or
 - (b) The inspector has reason to believe that the conditions do not create an imminent and irreparable hazard, the inspector shall enter after obtaining a warrant or order as authorized by the laws of the State of Washington.
3. If such building, structure, property or portion thereof is unoccupied, the inspector shall first make a reasonable effort to locate the owner, occupant or other persons having charge or control of the building, structure, property or portion thereof and request permission to enter. If the inspector is unable to locate the owner, occupant or such other persons and if:
 - (a) The inspector has reason to believe that conditions therein create an immediate and irreparable hazard to the health, safety and welfare of the community, he may make entry; or
 - (b) The inspector has reason to believe that the conditions do not create an imminent and irreparable hazard, the inspector shall enter after obtaining a warrant or order as authorized by the laws of the State of Washington.

4. It is unlawful for any owner or occupant or any other person having charge, care or control of any building, structure, property or portion thereof to fail or neglect after proper demand has been given to permit prompt entry thereon where the inspector has reason to believe that conditions therein create an immediate and irreparable hazard to the health, safety and welfare of the community.

C. MISDEMEANOR

As an alternative to any other judicial or administrative remedy provided in this section or by law or other ordinance, any person, organization, corporation or partnership, or their agents or assigns who willfully or knowingly violate(s) any provision of Titles 5, 7, 9, 12, 13, 14, 15, 16, 17, 18, 19 and 21 and Chapters 10.08 and 10.12 of the Lynnwood Municipal Code, or rule or regulation adopted thereunder, or by each act of commission or omission procures, aids or abets such violation, is guilty of a misdemeanor unless such violation is otherwise designated as a gross misdemeanor by the Lynnwood Municipal Code. Each day such violation continues shall be considered an additional and separate misdemeanor or gross misdemeanor offense.

D. CIVIL PENALTY

1. In addition to or as an alternative to any other judicial or administrative remedy provided in this section or by law or by other ordinance, any person, organization, corporation or partnership and their agents or assigns who violates any provision of Chapters 10.08 and 10.12 and Titles 5, 7, 9, 12, 13, 14, 15, 16, 17, 18, 19, and 21 of the Lynnwood Municipal Code or rules and regulations adopted thereunder or by each act of commission or omission procures, aids or abets such violation shall be subject to a civil penalty in accordance with the following schedule:
 - a. First day of each violation, one hundred dollars;
 - b. Second day of each violation, two hundred dollars;
 - c. Third day of each violation, three hundred dollars;
 - d. Fourth day of each violation, four hundred dollars;
 - e. Each additional day of each violation beyond four day four, five hundred dollars per day.
2. The civil penalties constitute a personal obligation of the person to whom the notice of civil violation is directed. An monetary penalty assessed must be paid to the office of the finance director within ten calendar days from the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due.
3. The office of the city attorney is authorized to take appropriate action to collect the civil penalty, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem penalties so long as the violation continues.

E. ADDITIONAL ENFORCEMENT

Notwithstanding the existence or use of any other remedy, the City may seek legal or equitable relief to enjoin any acts or practices or abate any conditions which constitute or will constitute a violation of any provision of the Lynnwood Municipal Code.

Section 3: Amendment. Section 10.02.045 of the Lynnwood Municipal Code is amended to read as follows:

10.02.045 LEAVING CHILDREN UNDER AGE SEVEN UNATTENDED IN A PARKED VEHICLE

No person, while in charge of a motor vehicle, shall park or willfully allow such vehicle to stand upon a highway, road, or street or in a place open to the public leaving a child under the age of seven (7) unattended therein, except when another responsible person of at least twelve (12) years of age has immediate control over such child and is physically present in the vehicle. Any person convicted of a violation of this section shall be guilty of a misdemeanor.

Section 4: Amendment. Section 10.04.610 of the Lynnwood Municipal Code is amended and re-codified as Section 10.02.050 to read as follows:

10.02.050 LEAVING CHILD UNATTENDED IN PARKED VEHICLE WHILE ENTERING TAVERN OR OTHER PLACE WHERE ALCOHOL IS DISPENSED

Any person having the care and custody, whether temporary or permanent, of a minor child under the age of twelve (12) years, who shall leave such child in a parked motor vehicle unattended by an adult, while such person enters a tavern or other premises where vinous, spirituous or malt liquors are dispensed for consumption on the premises shall be guilty of a gross misdemeanor.

Section 5: Amendment. Section 10.02.065 of the Lynnwood Municipal Code is amended to read as follows:

10.02.065 TELEPHONE CALLS TO HARASS, INTIMIDATE OR EMBARRASS - STATE STATUTES RELATING TO, ADOPTED BY REFERENCE - PENALTY

- A. The following statutes are adopted by reference as and for a portion of the criminal ordinance of this City as if set forth in full in this section, with the exception of the penalty provisions thereof which are superseded by the penalty provisions of this section as set forth in subsection (B) of this section:
1. RCW 9.61.230 Telephone calls to harass, intimidate, torment or embarrass;
 2. RCW 9.61.240 Telephone calls to harass, intimidate, torment or embarrass. Permitting telephone to be used;
 3. RCW 9.61.250 Telephone calls to harass, intimidate, torment or embarrass. Offense, where deemed committed;
- B. Any person who is convicted of violating the provisions of this section is guilty of a gross misdemeanor.

Section 6: Repealer. Section 10.02.068 (“Violation of Anti-Harassment Order-Penalty”) of the Lynnwood Municipal Code is repealed in its entirety.

Section 7: Repealer. Section 10.04.890 (“Violation of Ordinances a Misdemeanor”) of the Lynnwood Municipal Code is repealed in its entirety.

Section 8: Repealer. Section 10.04.920 (“Penalties for Violations”) of the Lynnwood Municipal Code is repealed in its entirety.

Section 9: Amendment. Section 10.08.070 of the Lynnwood Municipal Code is amended to read as follows:

10.08.070 VIOLATION-PENALTY

Any person, firm or corporation violating any of the provisions of this chapter is, unless otherwise provided in this chapter, guilty of a misdemeanor.

Section 10: Amendment. Section 10.12.800 of the Lynnwood Municipal Code which sets the penalty for violations of Sections 10.12.300 or 10.12.600 of the Lynnwood Municipal Code is amended to read as follows:

10.12.800 PENALTY FOR VIOLATIONS

Any person convicted of a violation of Sections 10.12.300 or 10.12.600 of the Lynnwood Municipal Code is guilty of a misdemeanor; Provided, however, that violation of subsection 10.12.300 B (9), when said violation occurs from a stereo or radio in a motor vehicle as defined in this chapter, shall be a class 1 civil infraction as defined in RCW 7.80.120.

Section 11: Amendment. Section 10.16.030 of the Lynnwood Municipal Code is amended to read as follows:

10.16.030 PENALTY FOR VIOLATION

Any person who shall violate any of the provisions of Section 10.16.020 shall be guilty of a misdemeanor.

Section 12: Amendment. Section 10.16.035 of the Lynnwood Municipal Code is amended to read as follows

10.16.035 CITY PARKS - OFF-LIMITS AREAS

- A. It is unlawful for any person to leave the defined and developed paths within a City Park or to walk, stand, sit on or use, damage, destroy or remove the natural vegetation in any Park, except as specifically set forth in paragraph D.
- B. It is unlawful for any person to enter or go upon any area in a Park which has been designated and posted by the Parks Director or his or her designee as a "Restricted Area," or "No Admittance," or "No Trespassing" area, or during any time the Park is posted as being closed to the public.
- C. For purposes of this section, "defined and developed paths:"
 - 1. Are those paths which have been deliberately improved by the City, and which are clearly delineated by one of the following methods:
 - a. By being paved with asphalt or concrete;
 - b. By being covered in bark, wood chips, or other material that clearly defines the area to be used for walking, and which edges are bordered on one or both side by shaped timbers, tree trunks or limbs, or by other deliberate placement of material designed to act as border;
 - c. By being constructed as a bridge, floating walkway, or planked walkway.
 - 2. Do not include service roads or access roads within the Park.
- D. This section does not apply to any of the following:
 - 1. To an authorized City employee in the performance of his/her duties, or other duly authorized persons pursuant to law.
 - 2. To use of picnic table areas, ball fields, and other developed areas of a Park.
 - 3. To use of an area planted with grass.
 - 4. To any area designated by signs advising that use of the area is not restricted.

E. Any person who violates this section shall be guilty of a misdemeanor.

Section 13: Amendment. Section 7.12.050 of the Lynnwood Municipal Code is amended to read as follows:

7.12.050 LITTERING PROHIBITED--EXCEPTION.

A. No person shall throw, drop, deposit, discard or otherwise dispose of litter upon any public place in the City or upon any private property not owned by him, or in any waters within the jurisdiction of the City, whether from a vehicle or otherwise, except:

1. When such property is designated by the State or by any of its agencies or the City for disposal of garbage and refuse, and such person is authorized by the proper public authority to so use such property; or
2. Into a litter receptacle or other container in such manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said public place or any private property; or
3. When such person is the owner or does have control or custody of the property, or has prior consent of the owner or tenant in lawful possession of such property, or unless the act is done under the personal direction of said owner or tenant, and provided said litter shall not cause a public nuisance or be in violation of any other State or local laws, rules or regulations.

B. Penalties for violation of this section.

1. It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.
2. It is a class 1 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount greater than one cubic foot. Unless suspended or modified by a court, the person shall also pay a litter cleanup fee of twenty-five dollars per cubic foot of litter. The court may, in addition to or in lieu of part or all of the cleanup fee, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property.

Section 14: Amendment. Section 11.12.070 of the Lynnwood Municipal Code is amended and recodified as Section 11.44.085 to read as follows:

11.44.085 LICENSES AND PLATES REQUIRED-PARKED VEHICLES

It shall be unlawful for a person to park or leave any vehicles, including any type of trailer, semi-trailer, or motorcycle, along or on a street or highway, or on any property owned by the City or subject to an easement in favor of the City, in the City of Lynnwood without first having obtained and having in full force and effect a current and proper vehicle license and displaying, as required by Chapter 46.16 RCW, vehicle license number plates, with the current tab showing renewal,

provided that this section shall not apply to vehicles exempted by RCW 46.16.010 as now or hereafter amended.

Section 15: Amendment. Section 11.12.080 of the Lynnwood Municipal Code is amended and recodified as Section 11.44.095 to read as follows:

11.44.095 OVERNIGHT PARKING PROHIBITED IN RESIDENTIAL AREAS

- A. It is unlawful to park, or otherwise leave, overnight, or between the hours of 12:01 a.m. and 6:00 a.m., on any street or highway in the City of Lynnwood within or abutting an area classified as residential (RS, RD, RML, or RMH) or open space (OS) by the official zoning ordinance, the following types of trailers and/or vehicles:
1. All types of trailers designed to be drawn by a motor vehicle except recreation trailers;
 2. Buses and trucks used for business purposes in whole or in part, excluding pickup or panel trucks of less than one ton capacity.
- B. It is unlawful to park or otherwise leave on any street or highway in the City of Lynnwood, within or abutting an area classified as residential (RS, RD, RML, or RMH) or open space (OS) by the official zoning ordinance, any recreation trailer if such trailer:
1. Is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic; or
 2. Has been parked or left standing in any public street or alley for any continuous period of time of more than one hundred sixty-eight hours.
- C. It is not necessary that restricted parking or other traffic signs be erected for the purpose of enforcing this section.

Section 16: Amendment. Section 11.12.090 of the Lynnwood Municipal Code is amended and recodified as Section 11.02.010 to read as follows:

11.02.010 AMENDMENT OF ADOPTED STATUTES

The amendment, addition or repeal by the Washington Legislature of any section or any of the adopted statutes set forth in this Chapter shall be deemed to amend this ~~section~~ chapter and the statutes contained in this ~~section~~ chapter which are adopted by reference in conformity with the amendment, addition or repeal, and it shall not be necessary for the legislative authority ~~or of this~~ City to take any action with respect to such addition, amendment, or repeal as provided by RCW 35A.12.140.

Section 17: Amendment. Section 11.12.010 of the Lynnwood Municipal Code is amended and recodified as Section 11.02.020 to read as follows:

11.02.020 CERTAIN STATUTES ADOPTED BY REFERENCE

The following statutes are adopted by reference as and for a portion of the criminal ordinance and code of this City as if set forth in full herein, with the exception of the penalty provisions thereof which are superseded by the penalty provisions of this chapter as may be set forth in this chapter, and which are made applicable to these statutes. Any reference to felonies or classification of felonies shall refer to the statutes of the State of Washington for definition and prosecution.

RCW 46.12.160	Driving Vehicle with Plates Canceled
RCW 46.70.021	No Dealer or Salesman's License
RCW 46.70.140	Illegal Use of Dealer Plates

Section 18: Repealer. Section 11.12.020 ("Classification of Offenses") of the Lynnwood Municipal Code is repealed in its entirety.

Section 19: Saving Clause. Sections 10.02.068, 10.04.890, 10.04.920 and 11.12.020 of the Lynnwood Municipal Code, which are repealed by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

Section 20: Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this Ordinance.

Section 21: Effective Date. This Ordinance shall take effect and be in full force five (5) day after its passage, approval and publication.

PASSED this 22nd day of December, 1997, and signed in authentication of its passage this 30th day of December, 1997.


TINA ROBERTS, MAYOR

ATTEST:

APPROVED AS TO FORM:


PAUL W. MENTER
Finance Director


JOHN P. WATTS
Lynnwood City Attorney

PUBLISHED: