Seattle City Council

Central Staff - Memorandum

Date: June 8, 2016

To: Gender Equity, Safe Communities and New Americans Committee

From: Amy Tsai, Council Central Staff

Subject: **Council Bill (CB) 118704: Voyeurism**

SUMMARY

Council Bill 118704 would amend Seattle Municipal Code 12A.10.120, Voyeurism in Public Places, to clarify prohibited conduct and make the language more consistent with state law.

BACKGROUND

The state voyeurism statute, RCW 9A.44.115, was enacted in 1998. Under the statute at that time, it was a class C felony to view, photograph, or film another person for the purpose of arousing or gratifying the sexual desire of any person, without the person's consent and in a place where the person would have a reasonable expectation of privacy.

In 2002, the Washington State Supreme Court, in State v. Glas (2001) 147 Wn.2d 410, determined that the voyeurism statute did not apply to acts of voyeurism committed in public places, based on a literal interpretation of the statute's terms.

Later that year, the Seattle City Council, in reaction to the Glas decision, created a gross misdemeanor crime of Voyeurism in a Public Place (Ordinance 121026, SMC 12A.10.120). A person is guilty of Voyeurism in a Public Place if he or she intentionally records or transmits an image of another person's intimate areas covered by clothing and the image is taken in a public place without that person's consent. Taking photos up women's skirts in a public place would be one example.

In 2003, the state legislature subsequently amended its voyeurism statute to address the Glas decision. Somewhat similar to the City, the state made it a crime to knowingly view, photograph, or film the intimate areas of another person without the person's consent, and under circumstances where the person has a reasonable expectation of privacy whether in a public or private place.

CB 118704 would update SMC 12A.10.120 using some of the language from the amended state law, clarifying that an element of voyeurism is that it occurs under circumstances where the person has a reasonable expectation of privacy in a public place.

ANALYSIS

State vs. Local Law

Synchronization of use of terms helps to ensure consistent application of the state and local laws prohibiting voyeurism. The state and local laws are, however, two different crimes. [1]

The state law addresses two voyeuristic situations. It covers the viewing/filming/photographing of someone (1) in a place where he or she would have a reasonable expectation of privacy (private places) and (2) under circumstances where he or she would have a reasonable expectation of privacy (which can be a public or private place). An element of the crime is that the viewing is done for the purpose of arousing or gratifying the sexual desire of any person. Violation of the state law is a class C felony.

In contrast, the local law was enacted in response to a perceived gap in the state law. As such, it pertains only to the latter of the two situations, involving voyeurism in a public place. Violation is a gross misdemeanor, and it does not carry the same requirement of being for the purpose of arousing or gratifying sexual desire.

What it Does

CB 118704 would synchronize the language of SMC 12A.10.120 with the public voyeurism provisions of RCW 9A.44.115. The main effect includes:

- Adding as an element of the crime that the act occur "under circumstances where the person has a reasonable expectation of privacy." In essence, these are situations where a person can expect to be safe from secret spying and invasion of privacy.

Other more minor changes were also made to follow the language of RCW 9A.44.115 and its definitions of "intimate areas" and "photographs" or "films":

- Using the state definition of "intimate areas" that means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view (versus a specific list of body parts identified in the current SMC 12A.10.120);
- Using the state definition of "photographs" or "films" that includes any recording or transmission of the image of a person, versus the current SMC 12A.10.120 definition of "record" and "transmit" that involves the recording or transmission of electronic images;
- In redefining "intimate areas," removes references to the areas being covered by clothes and the corresponding reference that those areas do not include intimate areas visible through a person's clothing;

[1] Of note, the state legislature in the 2016 session considered a bill, HB 2970, that would have created a crime of voyeurism in the second degree that would not require that the act be committed for the purpose of arousing or gratifying sexual desire, and would be punishable as a gross misdemeanor.

- Voyeurism involves actions taken without the person's knowledge and consent, as opposed to just consent;
- A technical change adds a citation to the Seattle Municipal Code section number.

Constitutionality

Code changes can occur via any number of routes in the legislative process. Sometimes residents or advocacy groups may contact Councilmembers with suggestions or concerns. The branches of government can also self-initiate code improvements. In this case, this section of code was brought to the attention of the City Attorney's Office via a complaint filed in Superior Court last fall that alleges that the City code is unconstitutionally vague and unenforceable.

The proposed language in CB 118704 was developed by the City Attorney's Office and uses language from the state voyeurism statute that was upheld as constitutional by the Washington State Court of Appeals in State v. Boyd (2007) 137 Wash.App. 910.

As summarized in the Summary and Fiscal Note, the proposed changes to SMC 12A.10.120 do the following:

1) provide clarity to individuals regarding prohibited conduct by including language from the state statute that was upheld by the courts; and
2) ensure consistent application of the state and local laws prohibiting voyeurism.