

CM González– AMENDMENT 1 – Lost or Stolen Firearms Penalty

Compared with the original bill presented on 6-13, this amendment would:

1. Eliminate the SMC’s ability to issue citations and provide such authority to the City Attorney.
2. Reflect technical adjustments.

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE relating to the reporting of lost or stolen firearms; increasing the maximum penalty for failure to report a lost or stolen firearm; adding legal presumptions and defenses regarding compliance or failure to comply with Section 10.78.010 of the Seattle Municipal Code; amending Section 10.78.010 of the Seattle Municipal Code; and adding new Sections 10.78.020, 10.78.030, and 10.78.040 to the Seattle Municipal Code.

..body

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 10.78.010 of the Seattle Municipal Code, enacted by Ordinance

124834, is amended as follows:

10.78.010 Reporting theft or loss of firearm required

A. If a firearm is lost or stolen, the person who owned or was in possession of the firearm shall report the theft or loss to the Seattle Police Department. The report shall be made within 24 hours after the theft or loss is first discovered, and shall include to the extent known:

1. The firearm's caliber, make, model, manufacturer, and serial number;
2. Any other distinguishing number or identification mark on the firearm; and
3. The circumstances of the loss or theft, including the date, place, and manner.

1 B. On receipt of a report of a stolen or lost firearm under this section, the Seattle Police
2 Department shall enter into the National Crime Information Center Database the following
3 information, to the extent known:

- 4 1. The firearm's caliber, make, model, manufacturer, and serial number; and
- 5 2. Any other distinguishing number or identification mark on the firearm.

6 C. The failure to comply with subsection 10.78.010.A shall constitute a civil infraction
7 subject to a civil fine or forfeiture (~~in accordance with Section 12A.02.080~~) not to exceed
8 \$1,000.

9 D. If a lost or stolen firearm is used by a third party to injure or kill another:

10 1. The failure to comply with subsection 10.78.010.A is prima facie evidence of
11 negligence per se; and

12 2. The proper use of measures to safely store or keep a firearm by securing it in a
13 locked container, properly engaged so as to render such weapon inaccessible or unusable to any
14 person other than the owner or other lawfully authorized user, when coupled with timely
15 compliance with subsection 10.78.010.A, is an affirmative defense to a claim of negligence. For
16 purposes of this subsection 10.78.010.D.2, "lawfully authorized user" means any person who:

17 a. Is not in the unlawful possession of a firearm under RCW 9.41.040; and

18 b. Is not prohibited from possessing a firearm under any other state or
19 federal law; and

20 c. Has the express permission of the owner to possess and use the firearm.

21 Section 2. A new Section 10.78.020 is added to the Seattle Municipal Code as follows:

22 **10.78.020 Notice of infraction—Issuance**

23 A. A peace officer has the authority to issue a notice of infraction:

1 1. When an infraction under this Chapter 10.78 is committed in the officer's
2 presence;

3 2. If an officer has reasonable cause to believe that a person has committed an
4 infraction under this Chapter 10.78.

5 B. The City Attorney's Office ~~A court~~ may issue a notice of infraction upon receipt of a
6 written statement of the officer that there is reasonable cause to believe that an infraction was
7 committed.

8 Section 3. A new Section 10.78.030 is added to the Seattle Municipal Code as follows:

9 **10.78.030 Response to notice of infraction—Contesting determination—Hearing—Failure**
10 **to appear**

11 A. Any person who receives a notice of infraction shall respond to such notice as
12 provided in this section within 15 days of the date the notice is personally served or, if the notice
13 is served by mail, within 18 days of the date the notice is mailed~~of the date of the notice.~~

14 B. If the person determined to have committed the infraction does not contest the
15 determination the person shall respond by completing the appropriate portion of the notice of
16 infraction and submitting it, either by mail or in person, or by responding via the internet or
17 phone to the Seattle Municipal Court. A check or money order in the amount of the penalty
18 prescribed for the infraction must be submitted with the response, if responding by mail, or if
19 responding online or phone, payment may be made using a credit card. When a response that
20 does not contest the determination is received, an appropriate order shall be entered in the court's
21 records.

22 C. If the person determined to have committed the infraction wishes to contest the
23 determination the person shall respond by completing the portion of the notice of infraction

1 requesting a hearing and submitting it, either by mail or in person, to the Seattle Municipal
2 Court. The court shall notify the person in writing of the time, place, and date of the hearing, and
3 that date shall not be sooner than seven days from the date of the notice, except by agreement.

4 D. If the person determined to have committed the infraction does not contest the
5 determination but wishes to explain mitigating circumstances surrounding the infraction, the
6 person shall respond by completing the portion of the notice of infraction requesting a hearing
7 for that purpose and submitting it, either by mail or in person, to the Seattle Municipal Court.
8 The court shall notify the person in writing of the time, place, and date of the hearing.

9 E. In any hearing conducted pursuant to subsections 10.78.030.C or 10.78.030.D, the
10 court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of
11 its order for up to one year and impose conditions upon the defendant the court deems
12 appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate
13 for administrative processing. If at the end of the deferral period the defendant has met all
14 conditions and has not been determined to have committed another infraction under this Chapter
15 10.78, the court may dismiss the infraction. A person may not receive more than one deferral
16 within a seven-year period.

17 F. If any person issued a notice of infraction:

18 1. Fails to respond to the notice of infraction as provided in subsection 10.78.030.B;
19 or

20 2. Fails to appear at a hearing requested pursuant to subsections 10.78.030.C or
21 10.78.030.D;

22 the court shall enter an appropriate order assessing the monetary penalty prescribed for
23 the infraction and any other penalty authorized by this Chapter 10.78.

1 Section 4. A new Section 10.78.040 is added to the Seattle Municipal Code as follows:

2 **10.78.040 Hearing—Contesting determination that infraction committed—Appeal**

3 A. A hearing held for the purpose of contesting the determination that an infraction has
4 been committed shall be without a jury.

5 B. The court may consider the notice of infraction and any other written report made
6 under oath submitted by the officer who issued the notice or whose written statement was the
7 basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The
8 person named in the notice may subpoena witnesses, including the officer, and has the right to
9 present evidence and examine witnesses present in court.

10 C. The burden of proof is upon the City to establish the commission of the infraction
11 by a preponderance of the evidence.

12 D. After consideration of the evidence and argument, the court shall determine whether
13 the infraction was committed. Where it has not been established that the infraction was
14 committed, an order dismissing the notice shall be entered in the court's records. Where it has
15 been established that the infraction was committed, an appropriate order shall be entered in the
16 court's records.

17 E. An appeal from the court's determination or order shall be to the Superior Court.
18 The decision of the Superior Court is subject only to discretionary review pursuant to Rule 2.3 of
19 the Rules of Appellate Procedure.

1 Section 5. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the _____ day of _____, 2018,
5 and signed by me in open session in authentication of its passage this _____ day of
6 _____, 2018.

7 _____
8 President _____ of the City Council

9 Approved by me this _____ day of _____, 2018.

10 _____
11 Jenny A. Durkan, Mayor

12 Filed by me this _____ day of _____, 2018.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)