Legislation Details (With Text)

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On agenda:	6/22/2020		
Final Action:	6/26/2020	**Ord. No.**	Ord 126098
Title:	AN ORDINANCE relating to the City's criminal code; removing the crime of drug traffic loitering and associated references in the Seattle Municipal Code; amending Section 10.09.010 of the Seattle Municipal Code and repealing Section 12A.20.050 of the Seattle Municipal Code.		
Sponsors:	Andrew Lewis, Tammy J. Morales		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Signed Ordinance 126098, 3. Affidavit of Publication		

Date	Ver.	Action By	Action	Result
6/26/2020	1	City Clerk	attested by City Clerk	
6/26/2020	1	Mayor	returned	
6/26/2020	1	Mayor	Signed	
6/24/2020	1	City Clerk	submitted for Mayor's signature	
6/22/2020	1	City Council	passed	Pass
6/15/2020	1	City Council	referred	
6/12/2020	1	Council President's Office	sent for review	
6/12/2020	1	City Clerk	sent for review	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to the City's criminal code; removing the crime of drug traffic loitering and associated references in the Seattle Municipal Code; amending Section 10.09.010 of the Seattle Municipal Code and repealing Section 12A.20.050 of the Seattle Municipal Code.

WHEREAS, the crime of drug traffic loitering was added to the Seattle Municipal Code in 1990, during the "War on Drugs," an effort to stop illegal drug use and trafficking; and

WHEREAS, the approach of the "War of Drugs" was to criminalize more behaviors, increase arrests, and require mandatory minimum sentences; and

WHEREAS, while those strategies increased arrest and incarceration rates, they did not proportionately

decrease the prevalence of drug use and trade; and

WHEREAS, since that time, the "War on Drugs" has been shown to have deeply disproportionate impacts on communities of color; and

WHEREAS, while people of color already experience discrimination at all stages of the criminal justice system, discrimination is particularly clear in the case of drug law violations, with nearly 80 percent of people in federal prison and nearly 60 percent of people in state prison for drug offenses are Black or Latinx; and

WHEREAS, research has shown that there is double the likelihood that prosecutors pursue mandatory minimum sentences for Black people than for white people charges with the same offense; and

WHEREAS, in 2015, the Council passed Resolution 31637, creating a workgroup to examine how the City could assist formerly incarcerated persons "reenter" their communities; and

WHEREAS, the Reentry Workgroup released its final report in October 2018, which included seven strategies and recommendations to reduce barriers for people living with criminal history; and

WHEREAS, one of the strategies to reduce incarceration costs and system involvement is to decriminalize; and

WHEREAS, the Reentry Workgroup "recommends the City move away from reliance on the criminal legal system to address behaviors related to poverty, illness, and oppression….[and] aim to reduce the criminalization of poverty and the disproportionate representation of Black and Indigenous individuals, other targeted communities of color, and people with disabilities within Seattle's criminal legal system" and "instead develop responses that do not burden individuals with criminal history or the trauma of incarceration;" and

WHEREAS, among the specific recommendations within a decriminalizing strategy is to repeal the crime of drug traffic loitering; and

WHEREAS, in response to the concerns raised by the Reentry Workgroup, the City Attorney decided to decline to prosecute drug traffic loitering; and

WHEREAS, while declining to prosecute is an important first step, as long as the crime still exists in the Seattle Municipal Code, a change in leadership or policy in the City Attorney's Office could result in renewed prosecution of drug traffic loitering; and

WHEREAS, to remedy an outdated approach to drug enforcement, prevent future prosecution of drug traffic loitering, and eliminate the opportunity for further disproportionality in the criminal legal system, removing drug traffic loitering from the Seattle Municipal Code is a key next step; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 10.09.010 of the Seattle Municipal Code, enacted by Ordinance 123188, is amended as follows:

10.09.010 Definitions.

For purposes of this chapter, the following words or phrases shall have the meaning prescribed below:

* * *

5. "Nuisance activity" includes:

a. a "most serious offense" as defined in ch. RCW 9.94A;

b. a "drug related activity" as defined in RCW 59.18.130;

c. any of the following activities, behaviors or criminal conduct:

1. Assault, Fighting, Menacing, Stalking, Harassment or Reckless Endangerment, as defined in SMC Chapter 12A.06;

2. Promoting, advancing or profiting from prostitution as defined in Chapter 9A.88 RCW;

3. Prostitution, as defined in SMC 12A.10.020;

4. Permitting Prostitution, as defined in SMC 12A.10.060;

5. Obstructing pedestrian or vehicular traffic, as defined in SMC 12A.12.015(4);

6. Failure to Disperse, as defined in SMC 12A.12.020;

7. Weapons violations, as defined in SMC Chapter 12A.14; or

8. ((~~Drug Traffic Loitering, as defined in SMC 12A.20.050(B); or~~

~~9.~~)) Gang related activity, as defined in RCW 59.18.030(16).

* * *

Section 2. Section 12A.20.050 of the Seattle Municipal Code, enacted by Ordinance 116307, is repealed:

((~~12A.20.050 Drug-traffic loitering.~~

~~A. As used in this Section 12A.20.050:~~

~~"Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW, or the equivalent provisions of any federal statute, state statute, or ordinance of any political subdivision of this state, and includes a verdict of guilty, a finding of guilty and an acceptance of a plea of guilty.~~

~~"Drug paraphernalia" means drug paraphernalia as the term is defined in the Uniform Controlled Substance Act, RCW 69.50.102, excluding, however, items obtained from or exchanged at any needle exchange program sponsored by Seattle-King County Public Health, and hypodermic syringes or needles in the possession of a confirmed diabetic or a person directed by his or her physician to use such items.~~

~~"Illegal drug activity" means unlawful conduct contrary to any provision of chapter 69.41, 69.50, or 69.52 RCW, or the equivalent federal statute, state statute, or ordinance of any political subdivision of this state.~~

~~"Known drug trafficker" means a person who has, within the knowledge of the arresting officer, been convicted within the last two years in any court of any felony illegal drug activity.~~

~~"Public place" is an area generally visible to public view and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, transit stations, shelters and tunnels, automobiles visible to public view (whether moving or not), and buildings, including those that serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds~~

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~~enclosing them.~~

~~B. A person is guilty of drug-traffic loitering if he or she remains in a public place and intentionally solicits, induces, entices, or procures another to engage in unlawful conduct contrary to chapter 69.41, 69.50, or 69.52 RCW.~~

~~C. The following circumstances do not by themselves constitute the crime of drug-traffic loitering. Among the circumstances that may be considered in determining whether the actor intends such prohibited conduct are that he or she:~~

~~1. Is seen by the officer to be in possession of drug paraphernalia; or~~

~~2. Is a known drug trafficker (provided, however, that being a known drug trafficker, by itself, does not constitute the crime of drug-traffic loitering); or~~

~~3. Repeatedly beckons to, stops or attempts to stop passersby, or engages passersby in conversation; or~~

~~4. Repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms, or any other bodily gesture; or~~

~~5. Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to stop pedestrians; or~~

~~6. Is the subject of any court order, which directs the person to stay out of any specified area as a condition of release from custody, a condition of probation or parole or other supervision or any court order, in a criminal or civil case involving illegal drug activity; or~~

~~7. Has been evicted as the result of his or her illegal drug activity and ordered to stay out of a specified area affected by drug-related activity.~~

~~D. No person may be arrested for drug-traffic loitering unless probable cause exists to believe that he or she has remained in a public place and has intentionally solicited, induced, enticed, or procured another to engage in unlawful conduct contrary to chapter 69.41, 69.50, 69.52 RCW.~~

~~E. A person convicted of drug-traffic loitering shall be guilty of a gross misdemeanor and punished in accordance with Chapter 12A.02.~~))

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

Passed by the City Council the _____ day of _____, 2020, and signed by me in open session in authentication of its passage this _____ day of _____, 2020.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 2020.

_____

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2020.

_____

Monica Martinez Simmons, City Clerk

(Seal)