



CITY OF KIRKLAND

City Attorney's Office

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MEMORANDUM

To: Kurt Triplett, City Manager

From: Oskar Rey, Assistant City Attorney

Date: February 8, 2013

Subject: Amendments Updating KMC Chapter 11.12 (Adoption of RCWs by Reference—Criminal Code)

RECOMMENDATION:

That Council adopts the attached ordinance amending Kirkland Municipal Code ("KMC") Chapter 11.12 relating to adoption of RCWs by reference.

BACKGROUND DISCUSSION:

In 2011, the City recodified Title 11 of the KMC, the City's criminal code. One of the purposes of the recodification was to incorporate state law into the KMC by reference as much as possible rather than adopting parallel City regulations. Therefore, Title 11 of the KMC incorporates many RCW sections by reference and sets forth separate City regulations only when the topic is not covered by state law or when the City's regulations differ from state law.

Washington Supreme Court case law suggests that cities are required to adopt by reference the sections of the RCW that they wish to charge in municipal courts. City of Auburn v. Gauntt, 274 P.3d 1033, 174 Wn.2d 321 (2012). Chapter 11.12 of the KMC adopts by reference the specific sections of state law that are chargeable in Kirkland Municipal Court. City staff recommends that two RCWs be added to the existing list:

--RCW 9.46.1962. Cheating in the second degree is a criminal misdemeanor. This section is being added at the request of the Washington State Gambling Commission agent for Casino Caribbean. It will allow misdemeanor cheating cases to be forwarded to the Kirkland Prosecutor.

--RCW 69.50.445. This provision was adopted as part of Initiative 502 (which legalized possession of less than one ounce of marijuana under state law) and was recently codified in the RCWs. It prohibits the opening or use of marijuana in view of the general public. Violation of this provision is a civil infraction.

The attached Ordinance adds these two RCW sections to the existing list of RCW sections incorporated by reference in the KMC.

ORDINANCE O-4401

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STATE CRIMINAL LAW PROVISIONS ADOPTED BY REFERENCE AND AMENDING AND UPDATING KIRKLAND MUNICIPAL CODE CHAPTER 11.12.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Section 11.12.040 is amended to read as follows:

11.12.040 RCW Title 9, entitled "Crimes and Punishments"—Adoption by reference.

The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

RCW 9.01.055	Citizen immunity if aiding officer, scope—When.
RCW 9.01.110	Omission, when not punishable.
RCW 9.01.130	Sending letter, when complete.
RCW 9.02.050	Concealing birth.
RCW 9.03.010	Abandoning, discarding refrigeration equipment.
RCW 9.03.020	Permitting unused equipment to remain on premises.
RCW 9.03.040	Keeping or storing equipment for sale.
RCW 9.04.010	False advertising.
RCW 9.04.090	Advertising fuel prices by service stations.
RCW 9.08.030	False certificate of registration of animals—False representation as to breed.
RCW 9.08.065	Definitions.
RCW 9.08.070	Pet animals—Taking, concealing, injuring, killing, etc.—Penalty.
RCW 9.08.072	Transferring stolen pet animal to a research institution—Penalty.
RCW 9.08.078	Illegal sale, receipt or transfer of pet animals—Separate offenses.
RCW 9.12.010	Barratry.
RCW 9.12.020	Buying, demanding, or promising reward by district judge or deputy.

RCW 9.16.005	Definitions.
RCW 9.16.010	Removing lawful brands.
RCW 9.16.020	Imitating lawful brand.
RCW 9.16.030	Counterfeit mark—Intellectual property.
RCW 9.16.035	Counterfeiting—Penalties.
RCW 9.16.041	Counterfeit items—Seizure and forfeiture.
RCW 9.16.050	When deemed affixed.
RCW 9.16.060	Fraudulent registration of trademark.
RCW 9.16.070	Form and similitude defined.
RCW 9.16.080	Petroleum products improperly labeled or graded—Penalty.
RCW 9.16.100	Use of the words "sterling silver," etc.
RCW 9.16.110	Use of words "coin silver," etc.
RCW 9.16.120	Use of the word "sterling" on mounting.
RCW 9.16.130	Use of the words "coin silver" on mounting.
RCW 9.16.140	Unlawfully marking article made of gold.
RCW 9.16.150	"Marked, stamped or branded" defined.
RCW 9.18.080	Offender a competent witness.
RCW 9.18.120	Suppression of competitive bidding.
RCW 9.18.130	Collusion to prevent competitive bidding—Penalty.
RCW 9.18.150	Agreements outside state.
RCW 9.24.010	Fraud in stock subscription.
RCW 9.24.040	Corporation doing business without license.
RCW 9.26A.090	Telephone company credit cards—Prohibited acts.
RCW 9.26A.100	Definitions.
RCW 9.26A.110	Fraud in obtaining telecommunications service—Penalty.
RCW 9.26A.120	Fraud in operating coin-box telephone or other receptacle.

RCW 9.26A.130	Penalty for manufacture or sale of slugs to be used for coin.
RCW 9.26A.140	Unauthorized sale or procurement of telephone records—Penalties—Definitions.
RCW 9.27.015	Interference, obstruction of any court, building, or residence—Violations.
RCW 9.35.005	Definitions.
RCW 9.35.030	Soliciting undesired mail.
RCW 9.38.010	False representation concerning credit.
RCW 9.38.015	False statement by deposit account applicant.
RCW 9.38.020	False representation concerning title.
RCW 9.40.040	Operating engine or boiler without spark arrester.
RCW 9.40.100	Tampering with fire alarm or fire fighting equipment—False alarm—Penalties.
RCW 9.41.010	Terms defined.
RCW 9.41.040	Unlawful possession of firearms—Ownership, possession by certain persons—Penalties.
RCW 9.41.050	Carrying firearms.
RCW 9.41.060	Exceptions to restrictions on carrying firearms.
RCW 9.41.090	Dealer deliveries regulated—Hold on delivery.
RCW 9.41.098	Forfeiture of firearms—Disposition—Confiscation.
RCW 9.41.100	Dealer licensing and registration required.
RCW 9.41.110	Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.
RCW 9.41.140	Alteration of identifying marks—Exceptions.
RCW 9.41.220	Unlawful firearms and parts contraband.

RCW 9.41.230	Aiming or discharging firearms, dangerous weapons.
RCW 9.41.240	Possession of pistol by person from eighteen to twenty-one.
RCW 9.41.250	Dangerous weapons—Penalty—Exemption for law enforcement officers.
RCW 9.41.260	Dangerous exhibitions.
RCW 9.41.270	Weapons apparently capable of producing bodily harm—Unlawful carrying or handling—Penalty—Exceptions.
RCW 9.41.280	Possessing dangerous weapons on school facilities—Penalty—Exceptions.
RCW 9.41.300	Weapons prohibited in certain places—Local laws and ordinances—Exceptions—Penalty.
RCW 9.41.800	Surrender of weapons or licenses—Prohibition on future possession or licensing.
RCW 9.41.810	Penalty.
RCW 9.44.080	Misconduct in signing a petition.
RCW 9.45.060	Encumbered, leased, or rented personal property—Construction.
RCW 9.45.070	Mock auctions.
RCW 9.45.080	Fraudulent removal of property.
RCW 9.45.090	Knowingly receiving fraudulent conveyance.
RCW 9.45.100	Fraud in assignment for benefit of creditors.
RCW 9.45.270	Fraudulent filing of vehicle report of sale.
<u>RCW 9.46.1962</u>	<u>Cheating in the second degree</u>
RCW 9.47A.010	Definition.
RCW 9.47A.020	Unlawful inhalation—Exception.
RCW 9.47A.030	Possession of certain substances prohibited, when.
RCW 9.47A.040	Sale of certain substances prohibited, when.
RCW 9.47A.050	Penalty.
RCW 9.51.010	Misconduct of officer drawing jury.
RCW 9.51.020	Soliciting jury duty.

RCW 9.51.030	Misconduct of officer in charge of jury.
RCW 9.61.230	Telephone harassment.
RCW 9.61.240	Telephone harassment—Permitting telephone to be used.
RCW 9.61.250	Telephone harassment—Offense, where deemed committed.
RCW 9.61.260	Cyberstalking.
RCW 9.62.010	Malicious prosecution.
RCW 9.62.020	Instituting suit in name of another.
RCW 9.68.015	Obscene literature, shows, etc.—Exemptions.
RCW 9.68.030	Indecent articles, etc.
RCW 9.68.050	“Erotic material”—Definitions.
RCW 9.68.060	“Erotic material”—Determination by court—Labeling—Penalties.
RCW 9.68.070	Prosecution for violation of RCW 9.68.060—Defense.
RCW 9.68.080	Unlawful acts.
RCW 9.68.100	Exceptions to RCW 9.68.050 through 9.68.120.
RCW 9.68.110	Motion picture operator or projectionist exempt, when.
RCW 9.68.130	“Sexually explicit material”—Defined—Unlawful display.
RCW 9.68A.011	Definitions.
RCW 9.68A.080	Reporting of depictions of minor engaged in sexually explicit conduct—Civil immunity.
RCW 9.68A.090	Communication with minor for immoral purposes—Penalties.
RCW 9.68A.103	Permitting commercial sex abuse of a minor—Penalty.
RCW 9.68A.110	Certain defenses barred, permitted.
RCW 9.68A.120	Seizure and forfeiture of property.
RCW 9.68A.150	Allowing minor on premises of live erotic performance—Definitions—Penalty.
RCW 9.69.100	Duty of witness of offense against child or any violent offense—Penalty.
RCW 9.73.010	Divulging telegram.

RCW 9.73.020	Opening sealed letter.
RCW 9.73.030	Intercepting, recording or divulging private communication—Consent required—Exceptions.
RCW 9.73.050	Admissibility of intercepted communication in evidence.
RCW 9.73.070	Persons and activities excepted from chapter.
RCW 9.73.080	Penalties.
RCW 9.73.090	Certain emergency response personnel exempted from RCW 9.73.030 through 9.73.080—Standards—Court authorizations—Admissibility.
RCW 9.73.100	Recordings available to defense counsel.
RCW 9.73.110	Intercepting, recording, or disclosing private communications—Not unlawful for building owner—Conditions.
RCW 9.91.010	Denial of civil rights—Terms defined.
RCW 9.91.020	Operating railroad, steamboat, vehicle, etc., while intoxicated.
RCW 9.91.025	Unlawful transit conduct.
RCW 9.91.060	Leaving children unattended in parked automobile.
RCW 9.91.130	Disposal of trash in charity donation receptacle.
RCW 9.91.140	Food stamps—Unlawful sale.
RCW 9.91.142	Food stamps—Trafficking.
RCW 9.91.160	Personal protection spray devices.
RCW 9.91.170	Interfering with dog guide or service animal.
RCW 9.91.175	Interfering with search and rescue dog.

Section 2. Kirkland Municipal Code Section 11.12.120 is amended to read as follows:

11.12.120 RCW Title 69, entitled “Food, Drugs, Cosmetics, and Poisons”—Adoption by reference.

The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

RCW 69.41.010	Definitions.
RCW 69.41.030	Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.
RCW 69.41.050	Labeling requirements—Penalty.
RCW 69.41.300	Definitions.
RCW 69.41.320	Practitioners—Restricted use—Medical records.
RCW 69.41.350	Penalties.
RCW 69.43.010	Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.
RCW 69.43.105	Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Record of transaction—Exceptions—Penalty.
RCW 69.43.110	Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Electronic sales tracking system—Penalty.
RCW 69.43.120	Ephedrine, pseudoephedrine, phenylpropanolamine—Possession of more than 15 grams—Penalty—Exceptions.
RCW 69.43.130	Exemptions—Pediatric products—Products exempted by the state board of pharmacy.
RCW 69.50.101	Definitions.
RCW 69.50.102	Drug paraphernalia—Definitions.
RCW 69.50.201	Enforcement of chapter—Authority to change schedules of controlled substances.

RCW 69.50.202	Nomenclature.
RCW 69.50.204	Schedule I.
RCW 69.50.206	Schedule II.
RCW 69.50.208	Schedule III.
RCW 69.50.210	Schedule IV.
RCW 69.50.212	Schedule V.
RCW 69.50.4014	Possession of 40 grams or less of marihuana—Penalty.
RCW 69.50.4016	Provisions not applicable to offenses under RCW 69.50.410.
RCW 69.50.404	Penalties under other laws.
RCW 69.50.407	Conspiracy.
RCW 69.50.412	Prohibited acts: E—Penalties.
RCW 69.50.4121	Drug paraphernalia—Selling or giving—Penalty.
RCW 69.50.425	Misdemeanor violations—Minimum penalties.
<u>RCW 69.50.445</u>	<u>Opening or consuming package containing marijuana, useable marijuana, or marijuana-infused product in view of general public — Penalty.</u>
RCW 69.50.505	Seizure and forfeiture.
RCW 69.50.506	Burden of proof; liabilities.
RCW 69.50.509	Search and seizure of controlled substances.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2013.

Signed in authentication thereof this ____ day of _____, 2013.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE O-4401

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO STATE CRIMINAL LAW PROVISIONS ADOPTED BY REFERENCE AND AMENDING AND UPDATING KIRKLAND MUNICIPAL CODE CHAPTER 11.12.

SECTION 1. Amends Kirkland Municipal Code ("KMC") Section 11.12.040 to adopt RCW 9.46.1962 "Cheating in the second degree" by reference.

SECTION 2. Amends KMC Section 11.12.120 to adopt RCW 69.50.445 "Opening or consuming package containing marijuana, useable marijuana, or marijuana-infused product in view of general public — Penalty" by reference.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2013.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk