



## CITY OF KIRKLAND

City Attorney's Office

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### MEMORANDUM

**To:** Dave Ramsay, City Manager  
**From:** Robin S. Jenkinson, City Attorney  
**Date:** September 29, 2009  
**Subject:** Ordinance Amending Criminal Code

#### Recommendation:

That the City Council passes the attached ordinance amending the Kirkland Municipal Code (KMC) relating to the crime of assault.

#### Background:

The City Prosecutors have requested that the City Council amend the KMC to make it consistent with State law by adding: 1) the language "with unlawful force" to the definition of "assault"; and 2) a defense for reasonable parental discipline.

#### Definition of Assault

Although there is not a State statute that specifically defines assault, case law holds that criminal assault requires the use of unlawful force. *Pasco v. Ross*, 39 Wn.App. 480 (1985). While the words, "unlawful force" are used in the first paragraph of the definition of assault in KMC 11.36.080, these words are omitted in the second paragraph of the definition. In *Ross* the Court found that because the Pasco city ordinance did not expressly require a showing of unlawful force, it unconstitutionally conflicted with State law and the defendant's conviction was overturned. In order to avoid a similar challenge, the addition of "unlawful force" to the second paragraph of KMC 11.36.080 is recommended.

#### Reasonable Parental Discipline Defense

Physical discipline of a child, by a parent or guardian "...is not unlawful when it is reasonable and moderate..." RCW 9A.16.100. (Copy attached.) This, under the State statute, is a defense available to parents and guardians who are charged with assaulting their child. The KMC does not currently include RCW 9A.16.100 as a defense to the charge of assault. A private defense attorney has recently argued that this is an unconstitutional conflict of law. The Prosecutors recommend the adoption of the defense in order to avoid future issues where a parent is charged with the assault on a child.

As requested by the City Prosecutors, the attached ordinance amends the definition of assault and adopts the defense of reasonable parental discipline.

Please let me know if there are any questions.

ORDINANCE 4209

AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 11.16A OF THE KIRKLAND MUNICIPAL CODE, "DEFENSES," AND AMENDING KIRKLAND MUNICIPAL CODE 11.36A.080 DEFINING ASSAULT.

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

Section 1. Kirkland Municipal Code Chapter 11.16A is amended to read as follows:

**Chapter 11.16A  
DEFENSES**

Sections:

- 11.16A.010 Definitions.
- 11.16A.020 Use of force—When lawful.
- 11.16A.060 Duress.
- 11.16A.070 Entrapment.
- 11.16A.080 Use of Force on Children – Actions presumed unreasonable.

<b>Kirkland Municipal Code Section</b>	<b>Section caption</b>	<b>RCW Section adopted by reference</b>
11.16A.010	Definitions.	9A.16.010
11.16A.020	Use of force—When lawful.	9A.16.020
11.16A.020(1)		9A.16.020(1)
11.16A.020(3)		9A.16.020(3)
11.16A.020(5)		9A.16.020(5)
11.16A.060	Duress.	9A.16.060
11.16A.060(1)		9A.16.060(1)
11.16A.060(3)		9A.16.060(3)
11.16A.060(4)		9A.16.060(4)
11.16A.070	Entrapment.	9A.16.070
<u>11.36A.040</u>	<u>Use of force on children – Actions presumed unreasonable.</u>	<u>9A.16.100</u>

Section 2. Kirkland Municipal Code Section 11.36A.080 is hereby amended to read as follows:

**11.36A.080 Assault defined.**

An assault is an act, with unlawful force, done with intent to inflict bodily injury upon another, tending, but failing to accomplish it, and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted but it is sufficient if an apprehension and fear of bodily injury is created in another.

An assault is also an intentional touching or striking or cutting or shooting of the person or body of another, with unlawful force, regardless of whether any actual physical harm is done to the other person.

An assault is also an intentional act, with unlawful force, which creates in another a reasonable apprehension and fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

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, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this \_\_\_\_ day of \_\_\_\_\_, 2009.

Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney