

ORDINANCE NO. 611

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING UNIVERSITY PLACE MUNICIPAL CODE TITLE 7, CRIMINAL CODE, TO CREATE A NEW CHAPTER 7.04 RELATING TO ENFORCEMENT ACTIONS INVOLVING GEOGRAPHIC RESTRICTIONS ON CERTAIN VIOLATORS – CONTROLLED SUBSTANCES, AND ARREST OF PERSONS SUBJECT TO COURT ORDER.

WHEREAS, Section 39.34.180 of the Revised Code of Washington (RCW) has, since 1996, made Washington municipalities responsible for the prosecution of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions; and

WHEREAS, on December 13, 2010, the City of University Place adopted a new criminal code that, for the most part, incorporates RCW criminal code sections by reference rather than restating them as local code sections as authorized by RCW 35.21.180; and

WHEREAS, the City Council of the City of University Place has determined that it would be in the best interests of the health, safety, and welfare of the citizens of University Place to place geographic restrictions on certain violators with respect to illegal drug related activity, and to specify the authority of the University Place Municipal Court to enforce its orders imposing restrictions on an individual basis; and

WHEREAS, in order to place such restrictions on drug-related violators and to authorize the Municipal Court to enforce such ordered restrictions, the City must amend UPMC Title 7, Criminal Code, to add Chapter 7.04 relating to enforcement actions involving geographic restrictions on certain violators – controlled substances, and arrest of persons subject to Court order.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE DOES ORDAIN AS FOLLOWS:

Section 1. Amended. Title 7 of University Place Municipal Code entitled "Criminal Code," is hereby amended with the following new sections:

7.04.000 - Controlled Substances

Chapter 7.04
Controlled Substances

Sections:

- 7.04.010 Loitering with the intent of engaging in drug-related activity.
- 7.04.020 Designation of anti-drug emphasis areas.
- 7.04.030 Violation of conditions of release, suspension or deferral as separate crime.
- 7.04.040 Places of illegal drug activity declared public nuisances.
- 7.04.050 Evidence of use for illegal drug purposes.
- 7.04.060 Conviction as prima facie evidence.
- 7.04.070 Penalties for maintenance of public nuisance.
- 7.04.080 Violation - Penalty.

7.04.010 - Loitering With the Intent of Engaging in Drug-Related Activity

- A. It is unlawful for any person to loiter in or near any thoroughfare, place open to the public, or near any public or private place in a manner and under circumstances manifesting the intent to engage in drug-related activity contrary to any of the provisions of Chapters 69.41, 69.50, or 69.52 RCW.
- B. Among the circumstances which may be considered in determining whether such intent is manifested are the following:

1. Such person is a known unlawful drug user, possessor, or seller. For purposes of this chapter, a "known unlawful drug user, possessor, or seller" is a person who has been convicted in any court within this state of any violation involving the use, possession, or sale of any of the substances referred to in Chapters 69.41, 69.50, and 69.52 RCW, or substantially similar laws of any political subdivision of this state or of any other state; or who is known to have been arrested for a drug related violation not resulting in a conviction because the person participated in a diversionary program, deferral program, Drug Court or a similar program; or a person who displays physical characteristics of drug intoxication or usage, such as "needle tracks"; or who possesses marijuana as defined in Section 9.22.010 of this Chapter; or a person who possesses drug paraphernalia as defined in Section 9.22.020 of this Chapter;
2. Such person is currently subject to an order from any court prohibiting his/her presence in a high drug activity geographic area;
3. Such person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is then engaged in an unlawful drug-related activity, including by way of example only, such person acting as a "lookout";
4. Such person transfers small objects or packages for currency in a furtive fashion;
5. Such person takes flight upon the appearance of a police officer;
6. Such person manifestly endeavors to conceal himself or herself or any object which reasonably could be involved in an unlawful drug-related activity;
7. The area involved is by public repute known to be an area of unlawful drug use and trafficking;
8. The premises involved are known to have been reported to law enforcement as a place suspected of drug activity pursuant to Chapter 69.52 RCW;
9. Any vehicle involved is registered to a known unlawful drug user, possessor, or seller, or a person for whom there is an outstanding warrant for a crime involving drug-related activity.

7.04.020 - Designation of Anti-Drug Emphasis Areas

- A. Certain areas of the City shall be designated as and identified to be anti-drug emphasis areas based on the repeat incidents of illegal drug activities occurring therein, and enhanced penalties shall be applied in event of conviction of unlawful drug related acts or loitering for drug purposes, within the said areas. The areas to be so designated shall be identified by the City Council in an Ordinance or Resolution passed after consultation with the City Manager, City Attorney and the chief law enforcement officer of the City, and the list identifying such areas shall be kept on file in the office of the City Clerk. Additional areas may also be identified by the Judge of the Municipal or District Court hearing drug related cases arising from within the City. If a defendant is convicted of a drug related case occurring from within an area designated as an anti-drug emphasis area, a condition or term of sentence, deferral, or suspension, shall be that such defendant shall stay out of all areas of the City designated as an anti-drug emphasis area, unless there are significant and substantial extenuating circumstances in the defendant's particular case justifying avoidance of the requirement for such condition or term of sentence, deferral, or suspension. In such case, the significant and substantial extenuating circumstances shall be identified and recited in the record of the case.
- B. The following area is hereby designated as and identified to be an anti-drug emphasis area:

Area A. ORCHARD CORRIDOR

Starting at the northeast corner of 48th St. W. and Orchard St. W. west 1537 feet to Leach Creek, then southwest 5690 straight-line feet following the centerline of Leach Creek to a point where Leach Creek would cross 64th St. W., then east along southern edge of 64th St. W. to a point 857 feet east of Lakewood Dr. W., then north 933 feet along the eastern edge of Pierce County tax parcels 0220238036, 0220238035, 0220238034, 0220238033, 0220234128, 0220234131, 0220234139, and 0220234140, then west 234 feet along the northern edge of Pierce County tax parcel 0220234140, then north 337 feet along the eastern edge of Pierce County tax parcel 0220234013, then west 530 feet along the

northern edge of Pierce County tax parcel 0220234013 to the east edge of Orchard St. W., then north along the eastern edge of Orchard St. W. to the northeast corner of 48th St. W. and Orchard St. W.

7.04.030 - Violation of Conditions of Release, Suspension or Deferral as Separate Crime

- A. The presence of any person within an anti-drug emphasis area in violation of court-imposed conditions of release or conditions of suspension or deferral of any sentence shall constitute a separate crime hereby designated a gross misdemeanor and any such person may be apprehended and arrested without the necessity for any warrant or additional court order. Upon conviction, any person so violating the conditions of release or conditions of suspension or deferral shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than one (1) year, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both such imprisonment and fine.

7.04.040 - Places of Illegal Drug Activity Declared Public Nuisances

Any building, structure or place within the City used for drug-related activity or for loitering with the intent of engaging in drug-related activity as defined in this Chapter is hereby declared to be a public nuisance.

7.04.050 - Evidence of Use for Illegal Drug Purposes

- A. Two or more criminal convictions of persons for drug-related offenses in a building, structure or place, within the one-year period preceding the commencement of an action under this Chapter shall give rise to a rebuttable presumption that the building, structure or place has been used for illegal drug purposes and is a public nuisance. In any action under this Chapter, evidence of the common fame and general reputation of the building or place, of the inmates or occupants thereof, or of those resorting thereto, shall be admissible as evidence to prove the existence of the public nuisance but must be supported by additional evidence. Evidence of the general reputation of the building or place, or of the inmates or occupants thereof that is sufficient to establish the existence of the public nuisance, shall be prima facie evidence of knowledge thereof and acquiescence and participation therein and responsibility for the nuisance by persons or legal entities having an interest in the property. Responsibility for the nuisance shall extend to the owners, lessors, lessees and all those in interest in any form in the property, real or personal, used in conducting or maintaining the public nuisance.
- B. Evidence of cooperation by owners, agents or managers of a building or place with police investigations or operations to control drug related activity may be used to rebut the presumptions created in this Chapter.

7.04.060 - Conviction as Prima Facie Evidence

Any conviction of any owner, manager, operator, agent or employee for any illegal drug activity, or for loitering with the intent of engaging in drug-related activity, when such offense was related to any business or commercial enterprise, shall be prima facie evidence that the building, structure or place upon or in which business or commercial enterprise is or was conducted, was used for illegal drug activities.

7.04.070 - Penalties for Maintenance of Public Nuisance

Maintenance of a public nuisance as declared herein, in addition to any other civil or criminal penalties, shall result in a civil penalty not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for a first conviction of maintaining a public nuisance and by abatement by closure of such business or commercial enterprise for the period of thirty (30) days for each subsequent conviction of maintaining a public nuisance.

7.04.080 - Violation - Penalty

Unless specifically provided otherwise, any person who violates the provisions of this Chapter is guilty of a gross misdemeanor and, upon conviction, shall be imprisoned in jail for a period of up to one year or fined an amount of not more than five thousand dollars (\$5,000.00) or both such jail time and fine.

Section 2. Severability. If any one or more sections, subsections or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

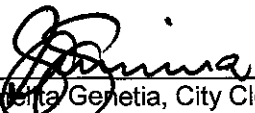
Section 3. Effective date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City. This Ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON OCTOBER 1, 2012.



Ken Grassi, Mayor

ATTEST:



Erinna Genetia, City Clerk

APPROVED AS TO FORM:



Steve Victor, City Attorney
Date of Publication:

Date of Publication: 10/03/12
Effective Date: 10/08/12