

5/31/91

ORDINANCE No.

115649

COUNCIL BILL No.

CB 108565

*Law Department*

The City of

AN ORDINANCE relating to the Seattle Criminal Code, amending Sections 12A.02.150, 12A.04.030, 12A.08.010 and 12A.08.040 to conform the definition of criminal trespass and its attendant terms to state law and to conform the mental states required for crimes to state law and repealing Section 12A.04.070

Honorable President:

Your Committee on 5/14/91

to which was referred the within Council report that we have considered the same

PASS

Full Council vote

COMPTROLLER FILE No.

Introduced: <u>May 6, 1991</u>	By: <u>Noland</u>
Referred: <u>May 6, 1991</u>	To: <u>Public Safety and Environment</u>
Referred:	To:
Referred:	To:
Reported: <u>MAY 20 1991</u>	Second Reading: <u>MAY 20 1991</u>
Third Reading: <u>MAY 20 1991</u>	Signed: <u>MAY 20 1991</u>
Presented to Mayor: <u>MAY 21 1991</u>	Approved: <u>MAY 24 1991</u>
Returned to City Clerk: <u>MAY 24 1991</u>	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

OK

*Department*

# The City of Seattle--Legislative Department

Date Reported  
and Adopted

## REPORT OF COMMITTEE

President:

Committee on 5/14/91 Public Safety & Environment

was referred the within Council Bill No. CB 103565

that we have considered the same and respectfully recommend that the same:

PASS

Full Council Vote 7-0

\_\_\_\_\_  
Committee Chair

ORDINANCE 115649

AN ORDINANCE relating to the Seattle Criminal Code, amending Sections 12A.02.150, 12A.04.030, 12A.08.010 and 12A.08.040 to conform the definition of criminal trespass and its attendant terms to state law and to conform the mental states required for crimes to state law and repealing Section 12A.04.070.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 12A.02.150 is amended as follows:

**12A.02.150 Definitions.**

In this subtitle, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement whether voluntary or involuntary.

2. "Acted" includes, where relevant, omitted to act.

3. "Actor" includes, where relevant, a person failing to act.

4. "Bodily injury" or "physical injury" means significant:

a. Physical pain or

b. Illness; or

c. An impairment (~~(or)~~) of physical condition.

~~((5. "Conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts or omissions.))~~

5. ~~((6.))~~ "Deadly force" means force which creates a substantial risk of causing death or serious bodily injury.

6. ~~((7.))~~ "Deadly weapon" means an explosive, firearm, or other weapon, device, instrument, article or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious bodily injury.

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7. ((8.)) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is ((for the time being used as a home or place of lodging)) used or ordinarily used by a person for lodging.

8. ((9.)) "Element of an offense" means: (i) such conduct or (ii) such attendant circumstances, or (iii) such a result of conduct as:

a. Is included in the description of the offense; or

b. Establishes the required kind of culpability; or

c. Negates an excuse or justification for such conduct; or

d. Negates a defense under the statute of limitations; or

e. Establishes jurisdiction.

9. ((10.)) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any person.

10. ((11.)) "Judge" includes every judicial officer authorized, alone or with others, to hold or preside over a court.

11. ((12.)) "Material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction or to any other matter similarly unconnected with: (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence of a justification or excuse for such conduct.

12. ((13.)) "Motor vehicle" means every vehicle which is self-propelled or propelled by electric power obtained from overhead trolley wires.

13. ((14.)) "Officer" and "public officer" has its

ordinary meaning and includes all assistants, deputies, clerks and employees of any public officer and all persons exercising or assuming to exercise any of the powers or functions of a public officer.

1  
2 14.((~~15.~~))"Omission" means a failure to act.

3 15.((~~16.~~))"Ordinance" means an ordinance of The City  
4 of Seattle.

5 16.((~~17.~~))"Peace officer" means a public officer  
6 charged with the duty to enforce public order and to  
7 make arrests for offenses under this subtitle or  
8 under the criminal laws of the state.

9 17.((~~18.~~))"Person," "he" and "actor" include any  
10 natural person, and, in addition, a corporation or  
11 an unincorporated association unless a contrary  
12 intention plainly appears.

13 18.((~~19.~~))"Prison" or "jail" means any place designated  
14 by law for the keeping of persons held in custody under  
15 process of law, or under lawful arrest.

16 19.((~~20.~~))"Prisoner" includes any person held in  
17 custody under process of law, or under lawful arrest.

18 20.((~~21.~~))"Property" includes both real and personal  
19 property.

20 21.((~~22.~~))"Reasonably believes" or "reasonable belief"  
21 designates a belief which the actor is not reckless  
22 or criminally negligent in holding.

23 22.((~~23.~~))"Serious bodily injury" or "serious physical  
24 injury" means bodily injury which creates a substantial  
25 risk of death or which causes serious disfigurement, or  
26 protracted loss or impairment of the function of any  
27 bodily member or organ.

28 23.((~~24.~~))"Sexual conduct" means any of the following:

a. Sexual intercourse in its ordinary sense which occurs upon any penetration, however slight, or contact between persons involving the sex

organs of one and the mouth or anus of another,

b. Masturbation, manual or instrumental, of one (1) person by another.

1 24.((25.)) "Statute" means the Constitution or an Act  
2 of the Legislature of this State.

3 25.((26.)) "Vehicle" means ((every device which may be  
4 used on a street, on rails, in the air, or on water,  
5 which is capable of transporting persons or  
6 property)) a "motor vehicle" as defined in Chapter  
7 11.14, any aircraft, or any vessel equipped for  
8 propulsion by mechanical means or by sail.

9 26.((27.)) "Voluntary" has the meaning specified in  
10 Section 12A.04.010.

Section 2. Section 12A.04.030 is amended as follows:

11 **12A.04.030 Kinds of culpability defined.**

12 A. Intent. ((A person intends or acts inten-  
13 tionally or with intent to accomplish a result or to  
14 engage in conduct described by the section defining the  
15 offense, when his conscious objective or purpose is to  
16 accomplish such a result or to engage in conduct of  
17 that nature)) A person acts with intent or  
18 intentionally when he or she acts with the objective or  
19 purpose to accomplish a result which constitutes a  
20 crime.

21 B. Knowledge. A person knows or acts knowingly  
22 or with knowledge ((with respect to)) when:

23 1. ((A result described by a section defining an  
24 offense, when he is aware that it is substantially  
25 certain that his conduct will cause such result)) He or  
26 she is aware of a fact, facts, or circumstances or  
27 result described by an ordinance defining an offense;  
28 or

2. ((Conduct described by a section defining an

1 offense, when he is aware that his conduct is of that  
2 nature, or) He or she has information which would lead  
3 a reasonable person in the same situation to believe  
4 that facts exist which facts are described by an  
5 ordinance defining an offense

6 ((3. A circumstance described by a section  
7 defining an offense, when he is aware that such  
8 circumstance exists, or

9 4. A particular fact, when he is aware that there  
10 is a high probability that such facts exist)).

11 C. Recklessness. A person is reckless or acts  
12 recklessly when he ((knows of and consciously  
13 disregards a substantial and unjustifiable risk that:

14 1. The result described by a section  
15 defining an offense may occur, or

16 2. A circumstance described by a section  
17 defining an offense exists, and when the disregard of  
18 such risk constitutes a gross deviation from the  
19 standard of conduct that a reasonable person would  
20 exercise in the situation)) or she knows of and  
21 disregards a substantial risk that a wrongful act  
22 may occur and his or her disregard of such sub-  
23 stantial risk is a gross deviation from conduct  
24 that a reasonable person would exercise in the  
25 same situation.

26 D. Criminal Negligence. A person is criminally  
27 negligent or acts with criminal negligence when  
28 he ((fails to be aware of a substantial and unjustifi-

able risk that:  
1. The result described by a section  
defining an offense may occur, or

2. A circumstance described by a section  
defining an offense exists, and the failure to be  
aware of such risk constitutes a gross deviation

1 from the standard of care that a reasonable person  
2 would exercise in that situation)) or she fails to  
3 be aware of a substantial risk that a wrongful act  
4 may occur and his or her failure to be aware of such  
5 substantial risk constitutes a gross deviation from  
6 the standard of care that a reasonable person would  
7 exercise in the same situation.

8 E. Requirement of Wilfulness Satisfied by  
9 Acting Knowingly. A requirement that an offense  
10 be committed wilfully is satisfied if a person acts  
11 knowingly with respect to the material elements of the  
12 offense, unless a purpose to impose further require-  
13 ments plainly appears.

14 Section 3. Section 12A.04.070 is repealed.

15 Section 4. Section 12A.08.010 is amended as follows:

16 **12A.08.010 Definitions:**

17 A. "Building", ((means any structure, vehicle,  
18 railway car, aircraft or watercraft used for overnight  
19 lodging of persons or for carrying on business  
20 therein)) in addition to its ordinary meaning, includes  
21 any dwelling, vehicle, railway car, cargo container, or  
22 any other structure used for lodging of persons or for  
23 carrying on business therein, or for the use, sale or  
24 deposit of goods; ((if a structure consists)) each unit  
25 of a building consisting of two (2) or more units  
26 separately secured or occupied ((it)) shall be treated  
27 as:

28 1. A single building in Section((s  
12A.08.020)) and 12A.08.030; and

2. ((As)) A separate building((s)) in  
Section 12A.08.040.

B. "Damage" means an injury or harm to property  
sufficient to lower its value or involving significant  
inconvenience or loss of efficiency.

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C. "Premises" ((means a building or real property)) includes any building, dwelling, structure used for commercial aquaculture, or any real property.

D. "Enter." The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his or her body, or any instrument or weapon held in his or her hand and used or intended to be used to threaten or intimidate a person or to detach or remove property.

E. "Enters or remains unlawfully." A person "enters or remains unlawfully" in or upon premises when he or she is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him or her by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land.

Section 5. Section 12A.08.040 is amended as follows:

12A.08.040 Criminal Trespass.

1 A. ((A person is guilty of criminal trespass in  
2 the first degree if he or she knowingly enters or  
3 remains in a building when he or she is not then  
4 licensed, invited or otherwise privileged to so enter  
5 or remain))

6 1. A person is guilty of criminal trespass  
7 in the first degree if he or she knowingly enters or  
8 remains unlawfully in a building.

9 2. Criminal trespass in the first degree is  
10 a gross misdemeanor.

11 B. ((A person is guilty of criminal trespass in  
12 the second degree if he or she knowingly enters or  
13 remains in or upon premises of another under  
14 circumstances not constituting criminal trespass in the  
15 first degree))

16 1. A person is guilty of criminal trespass  
17 in the second degree if he or she knowingly enters or  
18 remains unlawfully in or upon premises of another under  
19 circumstances not constituting criminal trespass in the  
20 first degree.

21 2. Criminal trespass in the second degree is  
22 a misdemeanor.

23 ((C. Criminal trespass in the first degree is a  
24 gross misdemeanor. Criminal trespass in the  
25 second degree is a misdemeanor.

26 D. A license or privilege to enter or remain in  
27 a building which is only partly open to the public is  
28 not a license or privilege to enter or remain in that  
part of a building which is not open to the public.  
A person who enters or remains upon unimproved and  
apparently unused land, which is neither fenced nor  
otherwise enclosed in a manner designed to exclude  
intruders, does so with license and privilege unless

1 notice against trespass is personally communicated to  
2 him or her by the owner of the land or some other  
3 authorized person, or unless notice is given by posting  
4 in a conspicuous manner. Land that is used for  
5 commercial aquaculture or for growing an agricultural  
6 crop or crops, other than timber, is not unimproved and  
7 apparently unused land if a crop or any other sign of  
8 cultivation is clearly visible or if notice is given  
9 by posting in a conspicuous manner. Similarly, a field  
10 fenced in any manner is not unimproved and apparently  
11 unused land.)

12 C((D)). In any prosecution under ((subsection A  
13 or B)) Section 12A.08.040 A or B, it is an affirmative  
14 defense that:

15 1. A building involved in an offense under  
16 Section 12A.08.040A was abandoned; or

17 2. The premises were at the time open to members  
18 of the public and the actor complied with all lawful  
19 conditions imposed on access to or remaining in the  
20 premises; or

21 3. The actor reasonably believed that the owner  
22 of the premises, or other person empowered to license  
23 access thereto, would have licensed him or her to enter  
24 or remain; or

25 4. The actor was attempting to serve legal  
26 process, which includes any document required or  
27 allowed to be served upon persons or property by any  
28 statute, rule, ordinance, ((governmental rule or))  
regulation, or court order, excluding delivery by the  
mails of the United States. This defense ((is  
available)) applies only if the actor did not enter  
into a private residence or other building not open to  
the public and the entry onto the premises was

reasonable and necessary for service of the legal process.

Section 6.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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(To be used for all Ordinances except Emergency.)

Section <sup>4</sup>..... This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 20<sup>th</sup> day of May, 1991,  
and signed by me in open session in authentication of its passage this 20<sup>th</sup> day of  
May, 1991.  
*[Signature]*  
President..... of the City Council.

Approved by me this 24<sup>th</sup> day of May, 1991.  
*[Signature]*  
Mayor.

Filed by me this 24<sup>th</sup> day of May, 1991.

Attest: *[Signature]*  
City Comptroller and City Clerk.

(SEAL)

Published.....

By *[Signature]*  
Deputy Clerk.

PUBLISH  DO NOT PUBLISH

CITY ATTORNEY \_\_\_\_\_

PUBLIC SAFETY & ENVIRONMENT COMMITTEE

May 14, 1991

C.B. 108565 - Background:

This legislation would amend the City's criminal trespass ordinance as well as certain definitions related to criminal trespass and other crimes as defined by the Municipal Code.

First, the amendments would correct alleged constitutional deficiencies in the present second degree criminal trespass ordinance. Several Seattle Municipal Court judges have ruled this ordinance unconstitutionally vague and overbroad because, if read literally, the ordinance makes it unlawful to be on another person's property even with the owner's permission. Unless changed, police officers are left without an important law enforcement tool because second degree criminal trespass relates to essentially all trespasses occurring outside buildings.

Second, the amendments would bring the wording of the City's criminal trespass ordinance, and of certain other important definitions relating to the Municipal Criminal Code, into conformance with State law. Some of the definitions to be amended include those related to the mental state of the defendant which the City is required to prove to establish criminal culpability. Other definitions, including "building", "dwelling", "vehicle", and "enter", would be amended to conform with State law.

The Law Department has recommended that as a general principle, the wording of Seattle's criminal ordinances parallel State law. This would make reported cases interpreting State statutes applicable to City ordinances, thereby giving greater guidance to the courts in interpreting those ordinances. The Law Department anticipates that these changes should both reduce the number of legal challenges to City ordinances, and the disparity in court rulings.

Fiscal Impact: None

Committee Chair Recommendation: Pass

For additional information: Mark Sidran, City Attorney, 684-8686  
Ted Inkley, Criminal Division Chief,  
684-7757

# Your City, Seattle



Memorandum

Date May 2, 1991

To Councilmember Jane Noland

From Ted Inkley, Director Criminal Division

Subject Proposed Criminal Trespass ordinance

Attached are the provisions of the Revised Code of Washington which are pertinent to our proposed amendments to Seattle's Criminal Trespass ordinance.

RECEIVED  
MAY 3 1991

JANE NOLAND  
SEATTLE CITY COUNCIL

SEATTLE CITY ATTORNEY  
MARK H. SIDRAN

CRIMINAL DIVISION  
710 SECOND AVENUE, SUITE 1414  
SEATTLE, WASHINGTON 98104  
(206) 684-7757 FAX: (206) 684-4648

LAW DEPARTMENT  
600 FOURTH AVENUE, 10TH FLOOR  
SEATTLE, WASHINGTON 98104  
(206) 684-8200 FAX: (206) 684-8284

UTILITIES DIVISION  
1015 THIRD AVENUE, SUITE 902  
SEATTLE, WASHINGTON 98104  
(206) 684-3361

April 22, 1991

RECEIVED

APR 25 1991

Hon. Jane Noland  
Chairperson, Public Safety Committee  
Seattle City Council  
1100 Municipal Building  
Seattle, WA 98104

JANE NOLAND  
SEATTLE CITY COUNCIL

Re: Proposed Legislation Amending Criminal Trespass Ordinance (SMC 12A.08.040), Amending Certain Definitions Relating to SMC 12A (SMC 12A.02.150, 12A.04.030, 12A.08.010), and Repealing SMC 12A.04.070.

Dear Councilmember Noland:

Enclosed for your review and requested Council action is proposed legislation amending the City's Criminal Trespass ordinance, and amending certain definitions which relate to Criminal Trespass and to other crimes as defined by the Municipal Code.

These amendments are designed to serve two purposes:

First, the amendments would correct alleged constitutional deficiencies in the present Second Degree Criminal Trespass ordinance. Several Seattle Municipal Court judges have ruled this ordinance to be unconstitutionally vague and overbroad because, if read literally, the ordinance makes it unlawful to be on another person's property even with the owner's permission. These rulings have left the City without an effective Second Degree Criminal Trespass ordinance; because Second Degree Criminal Trespass relates to essentially all trespasses occurring outside buildings, this has deprived police officers of an important law enforcement tool.

Second, the amendments would bring the wording of the City's Criminal Trespass ordinance, and of certain important definitions relating to the Municipal Criminal Code, into conformance with State law. Among the definitions which the proposed ordinance would amend are those which relate to the mental states the City is required to prove to establish the defendant's criminal culpability. Other definitions, including "building," "dwelling," "vehicle" and "enter," also would be amended to conform with State law.

Hon. Jane Noland  
April 22, 1991  
page two

We believe that, as a general principle, the wording of Seattle's criminal ordinances should parallel State law. This would make reported cases interpreting State statutes applicable to City ordinances, thereby giving greater guidance to the Courts in interpreting those ordinances. We anticipate that this would reduce both the number of legal challenges to City ordinances, and the disparity in Court rulings. While exceptions to this principle should be made when a State statute is poorly written or when an ordinance addresses problems unique to Seattle, the Criminal Trespass ordinance raises neither of these concerns.

We hope that the Council will be able to act on this proposed ordinance at an early date. In the meantime, please feel free to contact me if you have questions, or wish to further discuss the proposed amendments.

Sincerely,



Ted Inkley  
CHIEF, CRIMINAL DIVISION

Encl. (proposed ordinance)

cc: Mark Sidran, City Attorney  
Patrick Fitzsimons, Chief of Police

proord/d8

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1986 c 257: See note following RCW 9A.56.010.

Effective date—Severability—1985 c 455: See RCW 9A.82.902 and 9A.82.904.

Severability—Effective date—1984 c 270: See RCW 9A.82.900 and 9A.82.901.

Severability—1982 c 129: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 129 § 11.]

**9A.04.090 Application of general provisions of the code.** The provisions of chapters 9A.04 through 9A.28 RCW of this title are applicable to offenses defined by this title or another statute, unless this title or such other statute specifically provides otherwise. [1975 1st ex.s. c 260 § 9A.04.090.]

**9A.04.100 Proof beyond a reasonable doubt.** (1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest degree. [1975 1st ex.s. c 260 § 9A.04.100.]

**9A.04.110 Definitions.** In this title unless a different meaning plainly is required:

(1) "Acted" includes, where relevant, omitted to act;

(2) "Actor" includes, where relevant, a person failing to act;

(3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;

(4) (a) "Bodily injury," "physical injury," or "bodily harm" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;

(5) "Building", in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods; each unit of a building consisting of two or more units separately secured or occupied is a separate building;

(6) "Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be

used, or threatened to be used, is readily capable of causing death or substantial bodily harm;

(7) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging;

(8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, city, district, or other local governmental unit;

(9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;

(10) "Indicted" and "indictment" include "informed against" and "information", and "informed against" and "information" include "indicted" and "indictment";

(11) "Judge" includes every judicial officer authorized alone or with others, to hold or preside over a court;

(12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty;

(13) "Officer" and "public officer" means a person holding office under a city, county, or state government, or the federal government who performs a public function and in so doing is vested with the exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(15) "Peace officer" means a duly appointed city, county, or state law enforcement officer;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(17) "Person", "he", and "actor" include any natural person and, where relevant, a corporation, joint stock association, or an unincorporated association;

(18) "Place of work" includes but is not limited to all the lands and other real property of a farm or ranch in the case of an actor who owns, operates, or is employed to work on such a farm or ranch;

(19) "Prison" means any place designated by law for the keeping of persons held in custody under process of law, or under lawful arrest, including but not limited to any state correctional institution or any county or city jail;

(20) "Prisoner" includes any person held in custody under process of law, or under lawful arrest;

(21) "Property" means anything of value, whether tangible or intangible, real or personal;

(22) "Public servant" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any

officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function;

(23) "Signature" includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto;

(24) "Statute" means the Constitution or an act of the legislature or initiative or referendum of this state;

(25) "Threat" means to communicate, directly or indirectly the intent:

(a) To cause bodily injury in the future to the person threatened or to any other person; or

(b) To cause physical damage to the property of a person other than the actor; or

(c) To subject the person threatened or any other person to physical confinement or restraint; or

(d) To accuse any person of a crime or cause criminal charges to be instituted against any person; or

(e) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(f) To reveal any information sought to be concealed by the person threatened; or

(g) To testify or provide information or withhold testimony or information with respect to another's legal aim or defense; or

(h) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or

(i) To bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(j) To do any other act which is intended to harm substantially the person threatened or another with respect to his health, safety, business, financial condition, or personal relationships;

(26) "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic laws, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail;

(27) Words in the present tense shall include the future tense; and in the masculine shall include the feminine and neuter genders; and in the singular shall include the plural; and in the plural shall include the singular. [1988 c 158 § 1; 1987 c 324 § 1; 1986 c 257 § 3; 1975 1st ex.s. c 260 § 9A.04.110.]

**Effective date—1988 c 158:** "This act shall take effect July 1, 1988." [1988 c 158 § 4.]

**Effective date—1987 c 324:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and all take effect immediately. The remainder of this act shall take effect July 1, 1988." [1987 c 324 § 4.]

**Effective date—1986 c 257 §§ 3-10:** "Sections 3 through 10 of this act shall take effect on July 1, 1988." [1987 c 324 § 3; 1986 c 257 § 12.]

**Severability—1986 c 257:** See note following RCW 9A.56.010.

## Chapter 9A.08

### PRINCIPLES OF LIABILITY

#### Sections

9A.08.010	General requirements of culpability.
9A.08.020	Liability for conduct of another—Complicity.
9A.08.030	Criminal liability of corporations and persons acting or under a duty to act in their behalf.

**9A.08.010 General requirements of culpability. (1) Kinds of Culpability Defined.**

(a) **Intent.** A person acts with intent or intentionally when he acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) **Knowledge.** A person knows or acts knowingly or with knowledge when:

(i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) **Recklessness.** A person is reckless or acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation.

(d) **Criminal negligence.** A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

(2) Substitutes for Criminal Negligence, Recklessness, and Knowledge. When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) Culpability as Determinant of Grade of Offense. When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) Requirement of Wilfulness Satisfied by Acting Knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. [1975 1st ex.s. c 260 § 9A.08.010.]

**9A.08.020 Liability for conduct of another—Complicity. (1) A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.**

9A.52.095	Vehicle prowling in the first degree.
9A.52.100	Vehicle prowling in the second degree.
A.52.110	Computer trespass in the first degree.
9A.52.120	Computer trespass in the second degree.
9A.52.130	Computer trespass—Commission of other crime.

**9A.52.010 Definitions.** The following definitions apply in this chapter:

(1) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property;

(2) "Enter". The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(3) "Enters or remains unlawfully". A person "enters or remains unlawfully" in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land;

(4) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer;

(5) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data;

(6) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means. [1985 c 289 § 1. Prior: 1984 c 273 § 5; 1984 c 49 § 1; 1975 1st ex.s. c 260 § 9A.52.010.]

**9A.52.020 Burglary in the first degree.** (1) A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling and if, in entering or while in the dwelling or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person therein.

(2) Burglary in the first degree is a class A felony. [1975 1st ex.s. c 260 § 9A.52.020.]

**9A.52.025 Residential burglary.** (Effective July 1, 1990.) (1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony. In establishing sentencing guidelines and disposition standards, the sentencing guidelines commission and the juvenile disposition standards commission shall consider residential burglary as a more serious offense than second degree burglary. [1989 2nd ex.s. c 1 § 1; 1989 c 412 § 1.]

Effective date—1989 2nd ex.s. c 1: "This act shall take effect July 1, 1990." [1989 2nd ex.s. c 1 § 4; 1989 c 412 § 4.]

**9A.52.030 Burglary in the second degree.** (Effective until July 1, 1990.) (1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle.

(2) Burglary in the second degree is a class B felony. [1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

**9A.52.030 Burglary in the second degree.** (Effective July 1, 1990.) (1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a building other than a vehicle or a dwelling.

(2) Burglary in the second degree is a class B felony. [1989 2nd ex.s. c 1 § 2; 1989 c 412 § 2; 1975-'76 2nd ex.s. c 38 § 7; 1975 1st ex.s. c 260 § 9A.52.030.]

Effective date—1989 2nd ex.s. c 1: See note following RCW 9A.52.025.

Effective date—Severability—1975-'76 2nd ex.s. c 38: See notes following RCW 9A.08.020.

**9A.52.040 Inference of intent.** In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent. [1975 1st ex.s. c 260 § 9A.52.040.]

**9A.52.050 Other crime in committing burglary punishable.** Every person who, in the commission of a burglary shall commit any other crime, may be punished therefor as well as for the burglary, and may be prosecuted for each crime separately. [1975 1st ex.s. c 260 § 9A.52.050.]

**9A.52.060 Making or having burglar tools.** (1) Every person who shall make or mend or cause to be made or mended, or have in his possession, any engine, machine, tool, false key, pick lock, bit, nippers, or implement

adapted, designed, or commonly used for the commission of burglary under circumstances evincing an intent to use or employ, or allow the same to be used or employed in the commission of a burglary, or knowing that the same is intended to be so used, shall be guilty of making or having burglar tools.

(2) Making or having burglar tools is a gross misdemeanor. [1975 1st ex.s. c 260 § 9A.52.060.]

**9A.52.070 Criminal trespass in the first degree.** (1)

A person is guilty of criminal trespass in the first degree if he knowingly enters or remains unlawfully in a building.

(2) Criminal trespass in the first degree is a gross misdemeanor. [1979 ex.s. c 244 § 12; 1975 1st ex.s. c 260 § 9A.52.070.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

**9A.52.080 Criminal trespass in the second degree.**

(1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor. [1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § 9A.52.080.]

Effective date—1979 ex.s. c 244: See RCW 9A.44.902.

**9A.52.090 Criminal trespass—Defenses.** In any prosecution under RCW 9A.52.070 and 9A.52.080, it is a defense that:

(1) A building involved in an offense under RCW 9A.52.070 was abandoned; or

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises, or other person empowered to license access thereto, would have licensed him to enter or remain; or

(4) The actor was attempting to serve legal process which includes any document required or allowed to be served upon persons or property, by any statute, rule, ordinance, regulation, or court order, excluding delivery by the mails of the United States. This defense applies only if the actor did not enter into a private residence or other building not open to the public and the entry onto the premises was reasonable and necessary for service of the legal process. [1986 c 219 § 2; 1975 1st ex.s. c 260 § 9A.52.090.]

**9A.52.095 Vehicle prowling in the first degree.** (1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the first degree is a class C felony. [1982 1st ex.s. c 47 § 13.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

**9A.52.100 Vehicle prowling in the second degree.** (1)

A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor. [1982 1st ex.s. c 47 § 14; 1975 1st ex.s. c 260 § 9A.52.100.]

Severability—1982 1st ex.s. c 47: See note following RCW 9.41.190.

**9A.52.110 Computer trespass in the first degree.** (1)

A person is guilty of computer trespass in the first degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another; and

(a) The access is made with the intent to commit another crime; or

(b) The violation involves a computer or data base maintained by a government agency.

(2) Computer trespass in the first degree is a class C felony. [1984 c 273 § 1.]

**9A.52.120 Computer trespass in the second degree.**

(1) A person is guilty of computer trespass in the second degree if the person, without authorization, intentionally gains access to a computer system or electronic data base of another under circumstances not constituting the offense in the first degree.

(2) Computer trespass in the second degree is a gross misdemeanor. [1984 c 273 § 2.]

**9A.52.130 Computer trespass—Commission of other crime.** A person who, in the commission of a computer trespass, commits any other crime may be punished for that other crime as well as for the computer trespass and may be prosecuted for each crime separately. [1984 c 273 § 3.]

Physical damage to computer programs: RCW 9A.48.100.

**Chapter 9A.56**

**THEFT AND ROBBERY**

Sections

9A.56.010	Definitions.
9A.56.020	Theft—Definition, defense.
9A.56.030	Theft in the first degree.
9A.56.040	Theft in the second degree.
9A.56.050	Theft in the third degree.
9A.56.060	Unlawful issuance of checks or drafts.
9A.56.070	Taking motor vehicle without permission.
9A.56.080	Theft of livestock.

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CITY OF SEATTLE

1991 JUN -6 AM 11:45  
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STATE OF WASHINGTON - KING COUNTY

5545  
City of Seattle

—ss.

No.

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

ORD: 115249

was published on

05/31/91

The amount of the fee charged for the foregoing publication is the sum of \$ \_\_\_\_\_, which amount has been paid in full.

K. Kells

Subscribed and sworn to before me on

05/31/91

Jennifer A. Nicholson

Notary Public for the State of Washington,  
residing in Seattle

# City of Seattle

ORDINANCE 115648

AN ORDINANCE relating to the Seattle Criminal Code, amending Sections 12A.02.150, 12A.04.030, 12A.08.010 and 12A.08.040 to conform the definition of criminal trespass and its attendant terms to state law and to conform the mental states required for crimes to state law and repealing Section 12A.04.070.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 12A.02.150 is amended as follows:

12A.02.150 Definitions.

In this subtitle, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement whether voluntary or involuntary.
2. "Acted" includes, where relevant, omitted to act.
3. "Actor" includes, where relevant, a person failing to act.
4. "Bodily injury" or "physical injury" means significant:

- a. Physical pain or
- b. Illness; or
- c. An impairment ((or)) of physical

condition.

((5. "Conduct" means an action or omission and its accompanying state of mind; or, where relevant, a series of acts or omissions.))

2. ((6.)) "Deadly force" means force which creates a substantial risk of causing death or serious bodily injury.

3. ((7.)) "Deadly weapon" means an explosive, firearm, or other weapon, device, instrument, article or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious bodily injury.

4. ((8.)) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is ((for the time being used as a home or piece of lodging)) used or ordinarily used by a person for lodging.

5. ((9.)) "Element of an offense" means: (i) such conduct or (ii) such attendant circumstances, or (iii) such a result of conduct as:

- a. Is included in the description of the offense; or
- b. Establishes the required kind of culpability; or
- c. Negates an excuse or justification for such conduct; or
- d. Negates a defense under the statute of limitations; or
- e. Establishes jurisdiction.

6. ((10.)) "Forcible felony" means any felony which

Article

DEFINITION OF DEFINITION

organs of one and the mouth or anus of another.

b. Masturbation, manual or instrumental, of one (1) person by another.

21. ((25.)) "Statute" means the Constitution or an Act of the Legislature of this State.

22. ((26.)) "Vehicle" means ((every device which may be used on a street, on rails, in the air, or on water, which is capable of transporting persons or property)) a "motor vehicle" as defined in Chapter 11.11. ANY AIRCRAFT, OR ANY VESSEL EQUIPPED FOR PROPULSION BY MECHANICAL MEANS OR BY SAIL.

23. ((27.)) "Voluntary" has the meaning specified in Section 12A.04.010.

Section 2. Section 12A.04.030 is amended as follows: 12A.04.030 Kinds of culpability defined.

A. Intent. ((A person intends or acts intentionally or with intent to accomplish a result or to engage in conduct described by the section defining the offense, when his conscious objective or purpose is to accomplish such a result or to engage in conduct of that nature)) A PERSON ACTS WITH INTENT OR INTENTIONALLY WHEN HE OR SHE ACTS WITH THE OBJECTIVE OR PURPOSE TO ACCOMPLISH A RESULT WHICH CONSTITUTES A CRIME.

B. Knowledge. A person knows or acts knowingly or with knowledge ((with respect to)) WHEN:

1. ((A result described by a section defining an offense, when he is aware that it is substantially certain that his conduct will cause such result)) HE OR SHE IS AWARE OF A FACT, FACTS, OR CIRCUMSTANCES OR RESULT DESCRIBED BY AN ORDINANCE DEFINING AN OFFENSE; OR

2. ((Conduct described by a section defining an offense, when he is aware that his conduct is of that nature; or)) HE OR SHE HAS INFORMATION WHICH WOULD LEAD A REASONABLE PERSON IN THE SAME SITUATION TO BELIEVE THAT FACTS EXIST WHICH FACTS ARE DESCRIBED BY AN ORDINANCE DEFINING AN OFFENSE

((3. A circumstance described by a section defining an offense, when he is aware that such circumstances exist; or

4. A particular fact, when he is aware that there is a high probability that such facts exist)).

C. Recklessness. A person is reckless or acts recklessly when he ((knows of and consciously disregards a substantial and unjustifiable risk that:

1. The result described by a section defining an offense may occur; or

2. A circumstance described by a section defining an offense exists, and when the disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would exercise in the situation)) HE OR SHE KNOWS OF AND