## STAFF REPORT

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| **Agenda Item:** | 9 | **Name:** | Clifton Curry |
| **Proposed No**.: | 2013-0347 | **Date:** | August 27, 2013 |

**SUBJECT**

AN ORDINANCE creating the offense of urinating in public and penalties for violation; adding a new chapter to K.C.C. Title 12 and prescribing penalties.

**SUMMARY**

This Proposed Ordinance would make it an infraction to urinate or defecate in public. State law and county code prohibit these acts for transit centers, but there is no other prohibition in County Code for other public places. In King County 17 cities have ordinances prohibiting these behaviors. This ordinance would define the offense as performing these acts in public places that are generally visible to public view.

**BACKGROUND**

In English criminal law, public nuisance is a class of common law offense in which the injury, loss or damage is suffered by the local community as a whole rather than by individual victims. State law defines public nuisance as a crime against the order and economy of the state where an act “unlawfully done annoys, injures or endangers the safety, health, comfort or repose of any considerable number of persons, offends public decency, befouls any area and in any way renders a considerable number of persons insecure in life or the use of property.”

Public urination and defecation can be said to fit the definition of a public nuisance, in that the act is injurious to health, indecent or offensive to the senses, and that it interferes with the comfortable enjoyment of life or property. However, neither state law nor King County Code makes urinating in public a defined crime except at a transit center or facility. There is no other King County Code section expressly prohibiting urination in public or making it a criminal offense. Nevertheless, many Washington cities and six other counties (Benton, Clark, Kitsap, Skagit, Snohomish, and Thurston counties) have enacted local ordinances that prohibit urination in public places. The following table shows the 17 King County cities with ordinances prohibiting this type of behavior and the level of punishment for an offense.

**King County Cities with**

**Ordinances Prohibiting Public Urination**

|  |  |  |
| --- | --- | --- |
| **City** | **Infraction** | **Misdemeanor** |
| Bellevue |  | Yes |
| Bothell | Class 1 |  |
| Burien |  | Yes |
| Duvall |  | Yes |
| Federal Way |  | Yes |
| Kenmore |  | Yes(transit center only) |
| Kent | Class 1 |  |
| Kirkland |  | Yes |
| Maple Valley | Class 1 |  |
| Mercer Island |  | Yes |
| Newcastle |  | Yes |
| North Bend | Class 1 |  |
| Renton |  | Yes |
| Seattle | Class 2 (1st Offense) | Second Offense |
| Shoreline | Class 2 (1st Offense) | Second Offense |
| Skykomish | Class 2 (1st Offense) | Second Offense |
| Tukwila |  | Yes |

**ANALYSIS**

This Proposed Ordinance would make it an infraction to urinate or defecate in public. Under the provisions of the ordinance, a person is guilty of urinating in public if the person intentionally urinates or defecates in a public place.

The ordinance defines "public place" as an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, bike trails, hiking trails, driveways, parking lots, automobiles whether moving or not, vacant land and buildings open to the general public, including those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them. However, "public place" does not include a washroom or toilet room.

A person who violates the provisions of this ordinance as a first offense would be guilty of an infraction**.** An infraction may be punished by a civil fine or forfeiture not to exceed two hundred fifty dollars. A subsequent violation could result in misdemeanor charges. In reviewing the sanctions associated with this type of offense in other jurisdictions shows that it is punishable as a civil infraction, a misdemeanor, or both—with a first offense being a civil infraction and subsequent violations being punishable as a misdemeanor. The cities of Seattle, Shoreline, and Skykomish use this model.

The ordinance has been reviewed by legal counsel and the prosecutor’s office who have recommended changes, described below. If this measure is approved in committee, it is subject to an advertising period before it can be heard in in full council.

**Potential Budgetary Implications.** According to the sheriff’s office, adoption of this ordinance will have no measurable fiscal impact. The King County District Court may incur some costs in processing any citations that might be issued based on the new prohibition, but those costs would be offset by fine revenues.

**AMENDMENTS**

Legal Counsel and the prosecutor’s office have reviewed the proposed ordinance and recommended changes to improve the ordinance and make it more enforceable. These recommended changes appear reasonable and will aid in the enforcement of the ordinance if passed. At the request of the sheriff’s office, the amendment removes “hiking trails” from the list of public places. The proposed Striking Amendment and Title Amendment are attached.

**ATTACHMENTS**

1. Proposed Ordinance 2013-0384
2. Striking Amendment 1
3. Title Amendment