

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Adoption of Ordinance No. 540 Amending General Provisions of the Shoreline Code to Require Criminal Acts be Knowingly Committed
<b>DEPARTMENT:</b>	City Attorney's Office
<b>PRESENTED BY:</b>	Ian Sievers, City Attorney

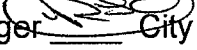

**PROBLEM/ISSUE STATEMENT:**

Unlawful conduct can be defined in the Municipal Code as a civil infraction, a misdemeanor or a gross misdemeanor. Pending litigation with Sugar's adult cabaret has challenged the lack of a mental element to many of the standards of conduct for operators, managers and dancers. The argument has been made that conduct declared unlawful make the actor strictly liable, or criminally liable for a result the actor did not intend or that a reasonable person would not know would occur based on the facts and circumstances. While state criminal offenses adopted in the Shoreline Municipal code contain a mental element of culpability, other chapters of the Code simply declare conduct unlawful. Inclusion of a default mental element for criminal conduct in the General Provisions of the code will supply this element of the offense and avoid challenges or court interpretation in prosecutions of offenses that are missing this element.

**RECOMMENDATION**

Staff recommends that Council adopt Ordinance No. 540 to provide a General Provision requiring criminal activity to be knowingly committed unless otherwise specified.

Approved By:

City Manager  City Attorney 

## DISCUSSION

The Shoreline criminal code adopts the same principles of construction that are in state law. Both SMC 9.10.020 and RCW 9A.04.020 declare one of the purposes of the criminal law is "To safeguard conduct that is without culpability from condemnation as criminal." Shoreline local ordinances that establish various crimes are inconsistent in calling out one of the adopted degrees of culpability defined under RCW 9A.08.010 adopted by reference (Intent, Knowledge, Recklessness, Criminal Negligence) in the Shoreline Code. Some municipal code chapters provide a mental element such as the development code; SMC 20.30.770 states: "Any person who willfully or knowingly causes, aids or abets a Code Violation by any act of commission or omission is guilty of a misdemeanor..." Other chapters do not, such as the parks ordinance, and the panoram and adult cabaret chapters. They simply state it is "unlawful to violate" the ordinance. The lack of a mental element can be problematic in that it is unclear which mental state must be established by the prosecutor. It is of particular concern where time, place and manner regulations involve first amendment rights such as distribution of handbills in park, and the panoram and adult entertainment ordinances. It has been argued, for example, that the Council intended criminal responsibility should attach to actions that cabaret operators or managers may not intend or even know was occurring. Such "strict liability" has been considered by some courts as too heavy a burden to place on first amendment rights and constitutes an unconstitutional prior restraint on free speech.

The proposed ordinance supplies a default mental element of any activity defined as a crime in the Shoreline Municipal Code. Including this provision in the General Provisions of SMC 9.10.090 avoids repeating the same language for every ordinance. The mental element selected is "knowingly committed." Under the definitions adopted in the Code and state law "knowingly committed" automatically includes criminal results that are intended, but does not include the less culpable mental states of recklessness, criminal negligence or strict liability.

RCW 9A.80.010 defines the Knowledge element as:

"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."

The proposed ordinance states, however, that a specific inclusion will control over the default presumption. Thus, if the Council intends a crime to be committed by only criminal negligence, as it has for negligent driving, it need only specify a different mental element in the ordinance.

"Knowing" commission is selected because this element best fits the seriousness of the majority of local offenses and the purpose declared in the Code not to condemn conduct

as criminal that is without culpability. It is also the standard that has already been adopted for "Code Violations" as stated above. This "Code Violation" term in the development code is a little misleading since it is not a general provision that applies to the entire code. It is, nonetheless, broader than the zoning code and includes any City ordinance or state or federal law regulations for protection of the public health or use or development of land or water or conditions of any permit. Specific laws listed as Code Violations include state public and moral nuisances, health ordinances, state building codes, and the garbage code. For example our public disturbance noise ordinance would be included as a public nuisance regulation and covered by the "knowingly committed" mental element supplied in the development code. It is assumed that the best default provision to fill gaps where no mental element of a crime is declared would be the same as that adopted for "code violations."

### **RECOMMENDATION**

Staff recommends that Council adopt Ordinance No. 540 to provide a General Provision requiring that criminal activity be knowingly committed unless otherwise specified.

### **ATTACHMENTS**

- A. Ordinance No. 540
- B. RCW 9A.80.010

**ORDINANCE NO. 540**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, ADOPTING A MENTAL ELEMENT FOR CRIMINAL CONDUCT IN THE PRINCIPLES OF LIABILITY SECTION OF THE CRIMINAL CODE; AND AMENDING SHORELINE MUNICIPAL CODE CHAPTER 9.10**

WHEREAS, the Shoreline Municipal Code does not include a default mental element provision for activities defined as crimes where a specific mental element is not included;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. Amendment.** Shoreline Municipal Code 9.10.090 is amended as follows:

**9.10.090 Principles of liability.**

A. The following provisions of the Revised Code of Washington as presently constituted or hereinafter amended are adopted by reference:

RCW

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.

B. All conduct declared to be unlawful in the Shoreline Municipal Code shall be knowingly committed as defined in RCW 9A.08.010 unless otherwise specified .

**Section 2. Publication, Effective Date.** This ordinance shall take effect and be in full force five days after passage and publication of a summary consisting of the title.

**PASSED BY THE CITY COUNCIL ON APRIL 13, 2009.**

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Mayor Cindy Ryu

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott Passey

\_\_\_\_\_  
Ian Sievers

City Clerk

City Attorney

Date of Publication:

Effective Date:

**RCW 9A.08.010****ATTACHMENT B****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.]