

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AN ORDINANCE relating to the City of Seattle Municipal Code that hereby redefines “duress” and “de minimis” and amends Sections 12A.04.170 and 12A.04.180.

WHEREAS, the massive protests in the wake of the murder of George Floyd and local law enforcement’s killing of Black, Indigenous, and people of color in Seattle have called attention to the inequity and racism of the criminal legal system; and

WHEREAS, the City of Seattle is experiencing growing income inequality and in November 2015 declared a state of emergency on homelessness; and

WHEREAS, in October 2019, one in nine Seattle residents lived below the poverty line; and

WHEREAS, Article 11 of the United Nation’s s International Covenant on Economic, Social and Cultural Rights (ICESCR) “recognize[s] the right of everyone to an adequate standard of living for” themselves and their families, including “adequate food, clothing and housing”; and

WHEREAS, the City currently spends approximately \$20 million a year on incarceration, which is known to significantly increase the risk of housing instability and homelessness; and

WHEREAS, the City only prosecutes misdemeanors, which are a less severe class of offenses that target activities that are largely attributable to poverty; and

WHEREAS, in 90 percent of the cases prosecuted by the City, the individual charged is represented by a public defender because they are indigent and economically insecure; and

WHEREAS, in 2015, the Council passed Resolution 31637, creating a workgroup (the Seattle Reentry Workgroup) to examine how the City could assist formerly incarcerated persons “reenter” their communities; and

WHEREAS, the Seattle Reentry Workgroup’s final report found “[p]overty, institutional racism, and systemic oppression are root causes that lead to mass incarceration”; and

1 WHEREAS, the Seattle Reentry Workgroup found that “[p]unishment and incarceration are harmful
2 and ineffective tools to address behaviors triggered by poverty and illness”; and

3 WHEREAS, the Seattle Reentry Workgroup “recommend[ed] the City move away from reliance
4 on the criminal legal system to address behaviors related to poverty, illness, and
5 oppression....[and] aim to reduce the criminalization of poverty and the disproportionate
6 representation of Black and Indigenous individuals, other targeted communities of color,
7 and people with disabilities within Seattle’s criminal legal system” and “instead develop
8 responses that do not burden individuals with criminal history or the trauma of
9 incarceration”; and

10 WHEREAS, the purpose of the Seattle Municipal Code, as stated in SMC 12A.02.040(A)(1), is
11 to punish conduct that is not excusable; and

12 WHEREAS, “duress” defined in SMC 12A.04.170 excuses, but does not render legal, conduct
13 that constitutes a crime under the Code when a person charged with an offense under the
14 Code demonstrates by a preponderance of the evidence at trial that the excuse applies;
15 and

16 WHEREAS, SMC 12A.04.170 does not incorporate by reference any equivalent statute
17 contained in the Revised Code of Washington, and the City of Seattle may define the
18 duress excuse to ensure that the duress excuse meets the particular local needs of the
19 Seattle community; and

20 WHEREAS, defining duress to excuse conduct that individuals engage in as a result of
21 immediate, unmet needs related to adequate standard of living for the individual and their
22 family, including adequate food, clothing and housing, will address the needs of the
23 Seattle community; and

1 WHEREAS, the SMC 12A.04.180(B), related to de minimus infractions, empowers and
2 encourages Seattle Municipal Court judges to dismiss criminal charges where the
3 misdemeanor level behavior was committed under circumstances not warranting the
4 condemnation of conviction; and

5 WHEREAS, de minimis relief should be available for conduct committed to meet an immediate
6 basic need or resulting from a behavioral health disorder, NOW, THEREFORE,

7 **BE IT ORDAINED BY THE CITY AS FOLLOWS:**

8 Section 12A.10.070 of the Seattle Municipal Code, is amended as follows:

9 12A.04.170 - Duress.

10 A. In any prosecution for a crime, it is a defense that:

- 11 1. The actor participated in the crime under compulsion by another who by
12 threat or use of force created an apprehension in the mind of the actor that
13 in case of refusal he/she or another would be exposed to immediate death
14 or immediate grievous bodily injury; and
- 15 2. That such apprehension was reasonable upon the part of the actor; and
- 16 3. That the actor would not have participated in the crime except for the
17 duress involved.

18 B. The defense of duress is not available if the actor intentionally or recklessly
19 places himself/herself in a situation in which it is probable that he/she will be
20 subject to duress.

21 C. The defense of duress is not established solely by a showing that a married person
22 acted on the command of his or her spouse.

23
24 New Section

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

D. In any prosecution for a crime, other than a crime of domestic violence, as defined in SMC 12A.06.120 or Driving Under the Influence, as defined in RCW 46.61.502, it is a defense that:

1. The actor participated in the offense with the intent of meeting an immediate basic need related to an adequate standard of living for the actor and/or their family, including adequate food, clothing, sanitation, and housing; or
2. At the time of the offense, the individual was experiencing symptoms of a behavioral health disorder not arising to a defense under SMC 12A.04.160;
3. Definitions:
 - a. For the purpose of this section a basic need is a commodity or service without which life cannot be sustained and includes, but is not limited to, adequate food, shelter, medical care, clothing, and access to sanitation.
 - b. For the purposes of this section, behavioral health disorder is defined as defined in RCW 71.05.020.

12A.04.180 - De minimis infractions.

1 The court may dismiss a prosecution if, having regard to the nature of the conduct charged
2 to constitute an offense and the nature of the attendant circumstances, it finds that the
3 defendant's conduct:

4
5 A. Was within a customary license or tolerance not inconsistent with the purpose of the
6 law defining the offense; or

7
8 B. Did not actually cause or threaten the harm or evil sought to be prevented by the law
9 defining the offense or did so only to an extent too trivial to warrant the condemnation
10 of conviction;

11
12 C. Presents such other extenuations that it cannot reasonably be regarded as envisioned by
13 the legislature in forbidding the offense; or

14
15 D. Was the result of attempting to meet an immediate basic need the defendant or that the
16 defendant's family was experiencing; or

17
18 E. At the time of the offense, the defendant was experiencing symptoms of a behavioral
19 health disorder.

20
21 1. For the purpose of this section a basic need is a commodity or service without which life
22 cannot be sustained and includes, but is not limited to, adequate food, shelter, medical

1
2
3
4
5
6

care, clothing and access to sanitation. (*State v. Bunting*, 112 Ore. App. 143, 145 (Or. Ct. App. 1992)]).

2. For the purposes of this section, behavioral health disorder is defined as defined in RCW 71.05.020