

**DRAFT ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON AMENDING BMC 10.04.090, ADOPTING THE WASHINGTON STATE STATUTORY PROVISION REGARDING THE FAILURE TO RESPOND TO A NOTICE OF CIVIL INFRACTION, AND PROVIDING THAT A VIOLATION FOR FAILING TO RESPOND TO A NOTICE OF INFRACTION WILL BE A MISDEMEANOR**

**WHEREAS**, ordinances of the City have established civil infraction as the penalty for certain illegal conduct;

**WHEREAS**, the ability of law enforcement is limited, for those individuals who are undeterred by the civil infraction penalty, to gain compliance with existing code provisions that are intended to maintain safety and quality of life in Bellingham;

**WHEREAS**, some of the individuals that are undeterred by the civil infraction penalty choose to ignore a notice of civil infraction issued by law enforcement;

**WHEREAS**, state law provides a mechanism to cite a person for a misdemeanor in the event that the person ignores a notice of civil infraction by failing to complete the portion of the notice of infraction and submitting it to the court and indicating that the person does not contest the civil infraction, that the civil infraction is contested, or that the person wishes to explain mitigating circumstances surrounding the infraction;

**WHEREAS**, by adopting this state law provision as an ordinance of the City of Bellingham, the Bellingham Police Department will gain an effective enforcement tool to address these situations and those individuals who routinely ignore civil infraction citations for certain specific illegal behavior;

**WHEREAS**, examples of civil infraction citations that are often ignored by this relatively small population of individuals include those that relate to drinking in public and certain park rule violations;

**WHEREAS**, this enforcement tool is being limited to certain code violations including those that prohibit persons from being present in a City park between 10:00 p.m. and 6:00 a.m. (BMC 8.04.040); excessive speed and other improper use of a motor vehicle in City parks (BMC 8.04.050); consuming alcohol in a public place (BMC 10.08.070); consuming marijuana in a public place (BMC 10.08.080); littering in any street, sidewalk, or other public place (BMC 10.60.030); operating a bicycle in the hours of darkness without a lamp (BMC 11.48.100); operating a bicycle without being equipped with a brake (BMC 11.48.100); riding a bicycle on the sidewalk in certain designated areas of the City (BMC 11.48.140); using a skateboard along streets, alleys, sidewalks and other public places in certain designated areas of the City (BMC 11.52.010);

**WHEREAS**, this enforcement tool will be most effective when combined with, and is intended to be used in concert with, social services.

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:**

**Section 1:** BMC 10.04.090 is hereby amended as follows:

**10.04.090- Promise of court appearance, nonappearance penalty, fail to pay**

A. Except for traffic or other civil infractions or citations, any person arrested for violation of this title, or BMC Title 11, who is eligible for release on personal recognizance, shall give his or her written promise to appear in municipal court at an agreed time in order to secure release pending said appearance.

B. Any person who willfully fails to pay a monetary penalty or to perform community service as required by the municipal court under this title or BMC Title 11 may be found in contempt of court as provided in Chapter 7.21 RCW.

C. Any person who willfully fails to respond as provided in Chapter 11.33 BMC to five or more notices of parking infraction issued pursuant to Chapter 11.33 or 11.36 BMC shall be guilty of a misdemeanor regardless of the disposition of the notices of infraction.

D. Violating a written promise to appear or failure to respond to a criminal citation or summons, as directed by the citation or summons, shall be punishable as a misdemeanor. The penalty for failure to respond to five or more parking infractions shall be a fine of \$25.00 per infraction.

E. Any person who, after receiving a notice of civil infraction for a violation of BMC 8.04.040, 8.04.150, 8.08.150, 10.08.070, 10.08.080, 10.60.030, 11.48.100, 11.48.140, or 11.52.010, that includes a statement of the options provided in RCW Chapter 7.80 for responding to the notice and the procedures necessary for exercising these options, knowingly fails to exercise one of the options within fifteen (15) days of the date of the notice, is guilty of a misdemeanor regardless of the disposition of the notice. A notice of civil infraction may be complied with by an appearance by counsel.

F. In addition to or in lieu of the penalties set forth in BMC 10.04.050, when sentencing or imposing conditions on a person convicted of, or receiving a deferred sentence, deferred prosecution or statutory or nonstatutory diversion agreement for a

misdemeanor based on failing to respond to a notice of civil infraction, the court has the authority to require the offender to (1) be evaluated and comply with treatment for alcohol, drug or mental health problems, (2) contact and participate in housing, food, vocational counseling and training and other social services, (3) perform community service, and (4) not subsequently commit a violation of BMC 10.04.090.

**Section 2:** This ordinance shall be effective on July 1, 2015.

**PASSED** by the Council this \_ day of \_\_\_\_\_, 2014.

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Council President

**APPROVED** by me this \_ day of \_\_\_\_\_, 2015.

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Mayor

**ATTEST:** \_\_\_\_\_

Finance Director

**APPROVED AS TO FORM:**

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Office of the City Attorney

Published:

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