

ORDINANCE NO. 2412
INTRODUCED BY: Blackhurst

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING ARTICLE 9 OF THE BRIGHTON MUNICIPAL CODE TO UPDATE HARASSMENT LANGUAGE, INCREASE THE VALUE LIMIT FOR THEFTS, CLARIFY TRESPASS, AND ADD COMPARABLE STATE LANGUAGE FOR INTERFERING WITH A POLICE OFFICER

WHEREAS, on March 22, 2022, in *People v. Moreno*, 506 P.3d 849, 857 (Colo. 2022), the Colorado Supreme Court held the phrase “intended to harass” in Section 18-9-111(1)(e), C.R.S., to be unconstitutionally overbroad; and

WHEREAS, Brighton Municipal Code Section 9-16-90(a)(4), harassment, includes the unconstitutionally overbroad phrase “intended to harass”; and

WHEREAS, Brighton Municipal Code Section 9-12-10(b)(3), acts constituting trespass, is confusing, does not support the City’s goal of deterring individuals from trespassing, and could lead to absurd results by allowing a defendant to enter into another person’s motor vehicle, motor home, trailer home, or trailer if the motor vehicle, motor home, trailer home, or trailer is on the defendant’s property even if the defendant did not have permission to enter; and

WHEREAS, the City of Brighton has an overriding interest in prohibiting motor vehicle, motor home, trailer home, or trailer trespasses regardless of the location of the offense or the defendant’s intent while entering the motor vehicle, motor home, trailer home, or trailer; and

WHEREAS, thefts in the City of Brighton are a major concern to the safety of the community and goods have increased in price substantially over the past several years; and

WHEREAS, pursuant to Section 16-4-113(2)(b), C.R.S., a municipal court is prohibited from imposing a monetary condition of release for a defendant charged with a municipal offense for which there is no comparable state misdemeanor offense that does not have substantially similar elements to a state misdemeanor offense; and

WHEREAS, Brighton Municipal Code Section 9-4-40, interfering with arresting police officer, has no comparable state misdemeanor offense because the elements under BMC Section 9-4-40 are not substantially similar Section 16-4-113(2)(b), C.R.S.; and

WHEREAS, the City Council therefore finds and determines that amending Section 9-4-40 of the Brighton Municipal Code so that there is a comparable state misdemeanor offense, which would allow the municipal court to issue a monetary condition of release, is in the best interest of the City of Brighton; and

WHEREAS, the City Council finds and determines that the above proposed amendments shall enhance, protect, and otherwise further the public health, safety, and welfare of the citizens of Brighton.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 9-16-90(a)(4) of the Brighton Municipal Code is amended to read as follows:

Section 9-16-90(a)(4). Harassment

- (4) Initiate communication with a person, anonymously or otherwise by telephone, telephone network, text message, instant message, computer, computer network, or computer system in a manner intended to threaten bodily injury or property damage, or make any comment, request, suggestion or proposal by telephone, telephone network, text message, instant message, computer, computer network or computer system that is obscene[.]

Section 2. Section 9-12-10(b)(3) of the Brighton Municipal Code is hereby deleted.

Section 3. Section 9-12-100 of the Brighton Municipal Code is amended to read as follows:

Section 9-12-100. Value limit

The City has the concurrent power, with the State, to prohibit theft, by ordinance, with a value of the thing involved less than two thousand dollars (\$2,000). This Article does not apply to things of value of two thousand dollars (\$2,000.00) or more, and it shall be an affirmative defense to a prosecution under this Article that the thing involved in the theft was valued at two thousand dollars (\$2,000.00) or more.

Section 4. Section 9-4-40 of the Brighton Municipal Code is amended to read as follows:

Section 9-4-40. Interfering with law enforcement or police officer

- (a) A person commits interfering with police officer or law enforcement if the person intentionally obstructs, impairs, or hinders the performance of a governmental function by a public servant by using or threatening to use violence, force, physical interference, or obstacle.
- (b) A person commits interfering with police officer or law enforcement if the person prevents or attempts to prevent a police officer acting under color of his or her official authority from effecting an arrest of the actor or another by:
 - a. The use or threatened use of force or physical violence;
 - b. Any other means which creates a substantial risk of causing physical injury to the police officer; or
 - c. Fleeing from the police officer after having been ordered to stop in a manner that would indicate to a reasonable person that the police officer was ordering such person to stop.

Section 5. All sections, subsections, and definitions of Article 9 of Chapters 4, 12, and 16 not expressly amended or modified herein remain in full force and effect.

Section 6. As provided in City Charter Section 5.9(A), this Ordinance, either as presented or as amended, shall be published in full as it was adopted after the initial reading. This Ordinance shall be in full force and effect five days after its final publication, as provided in City Charter Section 5.8, except as set forth herein.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS
7th DAY OF March, 2023.

INTRODUCED, PASSED ON FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS 21st DAY OF March, 2023.

CITY OF BRIGHTON, COLORADO

GREGORY MILLS, Mayor

ATTEST:

NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:

MICHAEL DAVIS, Assistant City Attorney