

ORDINANCE NO. 22-1181

AN ORDINANCE OF THE CITY OF BLACK DIAMOND, WASHINGTON, AMENDING TITLE 9 OF THE BLACK DIAMOND MUNICIPAL CODE TO HARMONIZE IT WITH RECENT CHANGES TO STATE STATUTES CRIMINALIZING PROTECTION ORDER VIOLATIONS; ADOPTING A NEW CHAPTER 9.97 OF THE BLACK DIAMOND MUNICIPAL CODE REGARDING PROTECTION ORDER VIOLATIONS; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Washington courts can issue several types of civil protection orders to restrain individuals from engaging in harmful or threatening behavior, including domestic violence protection orders (DVPOs), sexual assault protection orders (SAPOs), stalking protection orders (Stalking POs), anti-harassment protection orders (AHPOs), vulnerable adult protection orders (VAPOs), and extreme risk protection orders (ERPOs); and

WHEREAS, prior to July 1, 2022, the statutes criminalizing violations of DVPOs, SAPOs, Stalking Pos, AHPOs, and ERPOs were scattered throughout the Revised Code of Washington (RCW); and

WHEREAS, in 2021, the Washington State Legislature enacted Engrossed Second Substitute House Bill 1320 (E2SHB 1320) with the purpose of modernizing, harmonizing, and improving the efficacy of the state's laws concerning civil protection orders; and

WHEREAS, E2SHB 1320 recodified state laws governing issuance and violation of protection orders and consolidated all of these laws into a single, newly established chapter of the RCW; and

WHEREAS, Title 9 of the Black Diamond Municipal Code (BDMC), "Public Peace, Morals, and Welfare," contains the City's criminal code and adopts by reference sections of the RCW that criminalize protection order violations and penalize such violations as gross misdemeanors; and

WHEREAS, the changes to state law adopted in E2SHB 1320 and effective July 1, 2022, include new chapters and sections of the Revised Code of Washington, which are not expressly identified or referenced in Title 9 of the BDMC; and

WHEREAS, Title 9 of the BDMC does not currently adopt the state statute

criminalizing the violation of ERPOs; and

WHEREAS, to continue to effectively enforce these important laws, the City Council desires to amend Title 9 of the BDMC, “Public Peace, Morals, and Welfare,” to harmonize the title with changes to state law effectuated by enactment of E2SHB 1320 and to adopt by reference all gross misdemeanor protection order violations identified in state law; and

WHEREAS, these amendments to Title 9 of the BDMC are necessary to protect the public health, safety, and welfare, and the recent changes to state law have further demonstrated that a public emergency exists requiring these amendments to become effectively immediately upon adoption;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. BDMC 9.84.110 Repealed. BDMC 9.84.110, “Violation of order—Penalties,” is hereby repealed.

Section 2. BDMC 9.96.010 Amended. BDMC 9.96.010, “Crimes occurring between family or household members—Domestic violence,” is hereby amended to read as follows:

9.96.010 - Crimes occurring between family or household members—Domestic violence.

- (1) Domestic violence anti-merger clause: Every person who, in the commission of a crime of domestic violence shall commit any other crime, may be punished therefore as well as for the crime of domestic violence, and may be prosecuted for each crime separately.
- (2) Strangulation:
 - (a) A person is guilty of strangulation if, under circumstances not amounting to a felony, he or she assaults another by means of strangulation.
 - (b) Strangulation shall mean intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by obstructing the nose or mouth of another person.
 - (c) Strangulation is a gross misdemeanor with a maximum penalty of three hundred sixty-five days in jail and a five thousand dollar fine, provided, any person convicted of this crime shall be punished by a mandatory minimum imprisonment of not less than thirty days,

provided, at its discretion the court may allow all or part of any imprisonment to be served through electronic home detention at the offender's expense.

(3) Exposing children to domestic violence:

(a) A person commits the crime of exposing children to domestic violence when he or she:

(i) Commits a crime of domestic violence, as defined in RCW 10.99.020, as currently enacted or hereafter amended; and

(ii) The crime is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child, minor stepchild, or any minor child residing within the household of the person or victim

(b) For the purposes of this section, "minor" shall mean a person younger than eighteen years; "witnessed" shall mean if the crime is seen or directly perceived in any other manner by the child.

(c) Exposing children to domestic violence is a gross misdemeanor with a maximum penalty of three hundred sixty-five days in jail and a five thousand dollar fine, provided, any person convicted of this crime shall be punished by a mandatory minimum imprisonment of not less than thirty days, provided, at its discretion the court may allow all or part of any imprisonment to be served through electronic home detention at the offender's expense. If the person is sentenced to less than the maximum statutory sentence, the court shall place the defendant on probation and the court shall impose conditions of probation that include attendance at a certified domestic violence perpetrator treatment program as well as a treatment program that addresses the effects of domestic violence on children, unless it is shown to the satisfaction of the court that a single program adequately addresses in a comprehensive fashion both domestic violence generally and the specific impacts of domestic violence on minor children.

(4) The following state statutes, including all future amendments, additions or deletions, are adopted by reference:

(a) RCW 26.09.300, Restraining orders—Notice—Refusal to comply—Arrest—Penalty—Defense—Peace officers, immunity.

- (b) RCW 26.26.138, Restraining order—Knowing violation—Penalty—Law enforcement immunity.
- (c) RCW 26.44.063, Temporary restraining order or preliminary injunction—Enforcement—Notice of modification or termination of restraining order.
- (d) RCW 26.44.067, Temporary restraining order or preliminary injunction—Contents—Notice—Noncompliance—Defense—Penalty.
- (e) Chapter 10.99 RCW, Domestic violence—Official response.
- ~~(f) Chapter 26.50 RCW, Domestic violence prevention.~~
- ~~(g)~~(f) RCW 9A.36.150, Interfering with the reporting of domestic violence.
- ~~(h)~~(g) RCW 26.10.220, Restraining orders—Notice—Refusal to comply—Arrest—Penalty—Defense—Peace officers, immunity.

Section 3. BDMC 9.100.010 Amended. BDMC 9.100.010, “Statutes incorporated by reference,” is hereby amended to read as follows:

BDMC 9.100.010 - Statutes incorporated by reference.

The following statutes regarding harassment and stalking, as they now exist or may hereafter be amended, renumbered or recodified, whether in the same or different section, chapter or title of the Revised Code of Washington, are hereby adopted by reference as a part of the BDMC and established in all respects as though such sections were set forth herein in full; and further provided, the inclusion of section captions is for convenience in identifying the subject of code sections only, and any error therein shall not affect the validity of the adoption by reference of the section so adopted ~~as the same exist or shall hereafter be amended are incorporated by reference:~~

RCW 9A.46.010	Legislative finding.
RCW 9A.46.020	Definition—Penalties.
RCW 9A.46.030	Place where committed.

RCW 9A.46.040	Court ordered requirements upon person charged with crime—Violation.
RCW 9A.46.050	Arraignment—No contact order.
RCW 9A.46.060	Crimes included in harassment.
RCW 9A.46.070	Enforcement of orders restricting contact.
RCW 9A.46.080	Order restricting contact—Violation.
RCW 9A.46.100	Convicted—Time when.
RCW 9A.46.110	Stalking.
RCW 10.14.020	Definitions.
RCW 10.14.030	Course of conduct—Determination of purpose.
RCW 10.14.120	Disobedience of order—Penalties.
RCW 10.14.170	Criminal penalty.
RCW 9.61.230	Telephone harassment.
RCW 9.61.240	Telephone harassment—Permitting telephone to be used.
RCW 9.61.250	Telephone harassment—Offense, where deemed committed.

Section 4. Chapter 9.97 BDMC Adopted. Chapter 9.30.090 BDMC, “Violation of Protection Orders,” is hereby adopted to read as follows:

Chapter 9.97 - Violation of Protection Orders

BDMC 9.97.010 - Statutes incorporated by reference.

The following statutes as they now exist or may hereafter be amended, renumbered or recodified, whether in the same or different section, chapter, or title of the Revised Code of Washington, are hereby adopted by reference as a part of the BDMC and established in all respects as though such sections were set forth herein in full; and further provided,

the inclusion of section captions is for convenience in identifying the subject of code sections only, and any error therein shall not affect the validity of the adoption by reference of the section so adopted:

RCW 7.105.010	Definitions.
RCW 7.105.450	Enforcement and penalties—Other than antiharassment protection orders and extreme risk protection orders.
RCW 7.105.455	Enforcement and penalties—Antiharassment protection orders.
RCW 7.101.460	Enforcement and penalties—Extreme risk protection orders—False petitions.

Section 5. Severability. If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 6. Declaration of Emergency; Effective Date. This ordinance, as a public emergency ordinance necessary for the protection of the public health, safety, and welfare, shall take effect and be in full force immediately upon its adoption. A non-exhaustive list of facts supporting this emergency declaration are included in the recitals above, which are adopted by reference as findings of fact as if fully set forth herein. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 18th DAY OF AUGUST, 2022.

CITY OF BLACK DIAMOND

Carol Benson, Mayor

Attest:

Brenda L. Martinez, City Clerk

Approved as to form:

David Linehan, City Attorney

Filed with the City Clerk: 8/19/22
Passed by the City Council: 8/18/22
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