

ORDINANCE NO. 09-904

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BLACK DIAMOND, WASHINGTON,
AMENDING CHAPTER 9.96, OF THE CRIMINAL CODE
OF THE CITY OF BLACK DIAMOND TO CRIMINALIZE
DOMESTIC VIOLENCE IN THE PRESENCE OF
CHILDREN AND DOMESTIC VIOLENCE
STRANGULATION**

WHEREAS, Article XI, Section 11 of the Washington State Constitution authorizes the City Council to establish additional crimes as long as said crimes do not conflict with State Law; and

WHEREAS, the City Council has enacted the City's law as set forth in the Black Diamond City Code; and

WHEREAS, Chapter 9 of the Black Diamond City Code identifies certain criminal violations designed to provide for public peace, morals, and welfare within the City; and,

WHEREAS, crimes of domestic violence are pervasive with long term consequences suffered by not just the direct victims, but also the child witnesses; and

WHEREAS, studies show that strangulation domestic violence crimes are some of the most lethal, with the perpetrators using strangulation as a form of power and control, and studies show that perpetrators who have used strangulation in the past are far more likely to commit homicide; and

WHEREAS, the City Council finds it is the best interest of the citizens to add the crime of domestic violence involving children witnesses and the crime domestic violence involving strangulation,

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

SECTION 1. Chapter 9.96 of the Black Diamond City Code is hereby amended to read as follows:

Crimes occurring between family or household members – Domestic violence.

~~RCW 26.09.300, 26.26.138, 26.44.063, 26.44.067, and Chapters 10.99 and 26.50 RCW as currently codified or as hereafter amended, are hereby adopted by reference.~~

~~RCW 9A.36.150 and 26.10.220, as currently codified or as hereafter amended, are hereby adopted by reference.~~

(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 365 days in jail and a \$5,000 fine, provided, any person convicted of this crime shall be punished by a mandatory minimum imprisonment of not less than 30 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 18 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 365 days in jail and a \$5,000 fine, provided, any person convicted of this crime shall be punished by a mandatory minimum imprisonment of not less than 30 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) RCW 9A.36.150, Interfering with the reporting of domestic violence.

(h) RCW 26.10.220, Restraining orders — Notice — Refusal to comply — Arrest — Penalty — Defense — Peace officers, immunity.

SECTION 2. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of

this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

SECTION 3. Ratification. Any and all acts consistent with the authority and prior to the effective date of this ordinance are hereby ratified and affirmed.

SECTION 4. Effective Date. This ordinance shall take effect and be in force five days from its passage, approval and publication, as provided by law.

PASSED by the City Council of the City of Black Diamond this 23 day of april, 2009.

CITY OF BLACK DIAMOND


MAYOR, Howard Botts

ATTEST:


BRENDA STREEPY, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY, LOREN COMBS

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

ORDINANCE NO.:

4/24/09
4/23/09
4/28/09
5/3/09
904