

Project title: An Ordinance Relating to Domestic Violence and Violations of Protective Court Orders, Amending Chapters 10.02, 10.16, 10.22, and 10.23 EMC.

Council Bill # *interoffice use*

CB 2207-32

Agenda dates requested:

7/27/22, 8/3/22, 8/10/22
Proposed action 7/27, 8/3/22
Consent

Action – 8/10/22

Ordinance

Public hearing

Yes No

Budget amendment:

Yes No

PowerPoint presentation:

Yes No

Attachments:

Proposed Ordinance

Department(s) involved:

Legal (Prosecutor)

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Initialed by:

Department head

Administration

Council President

Project: Ordinance amendment

Partner/Supplier: N/A

Location: N/A

Preceding action: N/A

Fund: N/A

Fiscal summary statement:

N/A

Project summary statement:

This proposed ordinance will amend the Everett Municipal Code to align with State Law updates that went into effect on 07/01/2022. These amendments relate to domestic violence definitions and prosecution of criminal violations of protective court orders, including domestic violence no-contact orders.

Recommendation (exact action requested of Council):

Adopt an Ordinance Relating to Domestic Violence and Violations of Protective Court Orders, Amending Chapters 10.02, 10.16, 10.22, and 10.23 EMC.



ORDINANCE NO. _____

An ORDINANCE Relating to Domestic Violence and Violations of Protective Court Orders, AMENDING Chapters 10.02, 10.16, 10.22, and 10.23 EMC.

WHEREAS,

- A.** In the 2022 legislative session the Washington State Legislature passed SHB 1901, which went into effect July 1, 2022, and which amended codification of certain definitions relating to enforcement against crimes of Domestic Violence and criminal violations of protective court orders.
- B.** Certain crimes of Domestic Violence and crimes of violating protective court orders enforced under the Everett Municipal Code count as priors for felonies under State Law, if certain definitions are pled and proven by the City prosecutors. When those definitions are met, these priors elevate certain subsequent repeat crimes from gross misdemeanors to felonies.
- C.** The Everett City Council deems it appropriate to adopt the revisions proposed herein to keep the Everett Municipal Code definitions consistent with State Law definitions in relation to enforcement against crimes of Domestic Violence and criminal violations of protective court orders.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 10.02.068 is amended as follows, with strikeouts deleted and underlining added:
“Dating relationship” has the same meaning as in RCW ~~26.50.010~~ 7.105.010 as currently enacted or later amended.

Section 2. EMC 10.02.087 is amended as follows, with strikeouts deleted and underlining added:
“Family or household members” has the same meaning as in RCW ~~26.50.010~~ 7.105.010 as currently enacted or later amended.

Section 3. EMC 10.02.107 is amended as follows, with strikeouts deleted and underlining added:
“Intimate partner” has the same meaning as in RCW ~~26.50.010~~ 7.105.010 as currently enacted or later amended.

Section 4. EMC 10.16.152 is amended as follows, with strikeouts deleted and underlining added:

A. 1. When any person charged with or arrested for stalking, as defined in Section 10.16.050 or RCW 9A.46.110, or any other stalking related offense under RCW 9A.46.060, is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, and the victim does not qualify for a domestic violence protection order under Chapter ~~26.50~~ 7.105 RCW, the court authorizing release may issue, by telephone, a stalking no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

2. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

3. The stalking no-contact order shall also be issued in writing as soon as possible.

B. 1. At the time of arraignment or whenever a motion is brought to modify the conditions of the defendant's release, the court shall determine whether a stalking no-contact order shall be issued or extended. If a stalking no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring, including real-time global position satellite monitoring with victim notification. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring, including costs relating to real-time global position satellite monitoring with victim notification.

2. A stalking no-contact order issued by the court in conjunction with criminal charges shall terminate if the defendant is acquitted or the charges are dismissed, unless the victim files an independent action for a stalking protection order. If the victim files an independent action for a civil stalking protection order, the order may be continued by the court until a full hearing is conducted pursuant to Section 6, Chapter 84, Washington Laws of 2013.

C. 1. The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter ~~26.50~~ 7.105 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

2. A certified copy of the order shall be provided to the victim at no charge.

D. If a stalking no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.

E. Whenever an order prohibiting contact is issued pursuant to subsection B of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year unless a different expiration date is specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state.

F. 1. When a defendant is found guilty of stalking, as defined in Section 10.16.050 or RCW 9A.46.110, or any other stalking related offense under RCW 9A.46.060 and a condition of the sentence restricts the defendant's ability to have contact with the victim, and the victim does not qualify for a domestic violence protection order under Chapter ~~26.50~~ 7.105 RCW, the condition shall be recorded as a stalking no-contact order.

2. The written order entered as a condition of sentencing shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter ~~26.50~~ 7.105 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

3. A final stalking no-contact order entered in conjunction with a criminal prosecution shall remain in effect for a period of five years from the date of entry.

4. A certified copy of the order shall be provided to the victim at no charge.

G. A knowing violation of a court order issued under subsection A, B or F of this section is punishable under Section 10.22.040.

H. Whenever a stalking no-contact order is issued, modified, or terminated under subsection A, B or F of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year unless a different expiration date is specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of

notice that an order has been terminated under subsection B of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

Section 5. Chapter 10.22 EMC is amended as follows, with strikeouts deleted and underlining added:

EMC 10.22.010 ~~Violation of No-Contact Order – Pre-trial:~~

A. 1. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

2. In issuing the order, the court shall also consider the provisions of RCW 9.41.800.

3. The no-contact order shall also be issued in writing as soon as possible.

B. At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the cost of the electronic monitoring.

C. 1. For violations committed prior to August 25, 2022, ~~W~~willful violation of a court order issued under subsection A or B of this section, and/or under the authority of RCW 10.99.040(2) or (3), is punishable under Section 10.22.040. For violations committed on or after August 25, 2022, see EMC 10.22.021

2. The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter ~~26.50~~ 7.105 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's prohibitions. Only the court can change the order."

D. If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.

EMC 10.22.020 ~~Violation of~~ No-Contact Order – Post Conviction:

A. When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

B. 1. For violations committed prior to August 25, 2022, Willful violation of a court order issued under subsection A of this section and/or under the authority of RCW 10.99.050 is punishable under Section 10.22.040. For violations committed on or after August 25, 2022, see EMC 10.22.021

2. The written order shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter ~~26.50~~ 7.105 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony."

EMC 10.22.021 Violation of No-Contact Order:

For violations committed on or after August 25, 2022, willful violation of a court order issued under EMC 10.22.010, EMC 10.22.020, and/or under the authority of RCW 10.99.040(2) or (3), and/or RCW 10.99.050, is punishable under Section 10.22.040.

EMC 10.22.025 Liability of Peace Officers.

A peace officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under Section 10.22.010 or 10.22.020 arising from an alleged incident of domestic violence brought by any party to the incident. No law enforcement officer may be held criminally or civilly liable for making an arrest under RCW 7.105.450 if the officer acts in good faith.

EMC 10.22.030 Violation of Restraining Order.

A. Whenever a restraining order is issued under Chapter 26.09, 26.10, or 26.26 RCW, a knowing violation of the order is punishable under Section 10.22.040.

B. A person is deemed to have notice of a restraining order issued under Chapter 26.09, 26.10, or 26.26 RCW if:

1. The person to be restrained or the person's attorney signed the order;
2. The order recites that the person to be restrained or the person's attorney appeared in person

before the court;

3. The order was served upon the person to be restrained; or
4. The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

C. It is a defense to prosecution under subsection A of this section that the court order was issued contrary to law or court rule.

EMC 10.22.040 Violation of Order for Protection:

A. Whenever an order is granted under ~~Section 9, Chapter 230, Washington Laws of 2017~~, Chapter 7.92, 7.90, 7.105, 9A.40, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.10, 26.26, 26.50 or 74.34 RCW, any temporary order for protection granted under Chapter 7.40 RCW pursuant to Chapter 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in RCW ~~26.50.110(4)~~ 7.105.450(4) or ~~26.50.110(5)~~ 7.105.450(5):

1. The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;
2. A provision excluding the person from a residence, workplace, school, or day care;
3. A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle;
4. A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or
5. A provision of a foreign protection order or a Canadian domestic violence protection order specifically indicating that a violation will be a crime.

B. Upon conviction, and in addition to any other penalties provided by law, the court:

1. May require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring; and
2. Shall impose a fine of \$15, in addition to any penalty or fine imposed, for a violation of a domestic violence protection order issued under Chapter 7.105 RCW. Revenue from the \$15 fine must be remitted monthly to the state treasury for deposit in the domestic violence prevention account.

EMC 10.22.050 Violation of Vulnerable Adult Protection Order.



Whenever an order for protection of a vulnerable adult is issued under Chapter 74.34 RCW or Chapter 7.105 RCW, a knowing violation of the order is punishable under Section 10.22.040, regardless of whether the respondent or person to be restrained is a family or household member as defined in this title.

EMC 10.22.060 Violation of Sexual Assault Protection Order.

RCW ~~7.90.010, 7.90.080, 7.90.090(6), 7.90.110(4), and 7.90.150(7)~~, 7.105.050, 7.105.3100, 7.105.450, and 7.105.900 as currently enacted or later amended, are adopted by reference as if set forth in full herein.

Section 6. EMC 10.23.050 is amended as follows, with strikeouts deleted and underlining added:

As used in this chapter, “harassment” may include but is not limited to any of the following crimes:

- A. Harassment (Chapter 10.23);
- B. Telephone Harassment (Section 10.18.010);
- C. Assault (Section 10.16.010);
- D. Reckless Endangerment (Section 10.16.020);
- E. Coercion (Section 10.16.040);
- F. Criminal Trespass in the First Degree (Section 10.68.030);
- G. Criminal Trespass in the Second Degree (Section 10.68.040);
- H. Criminal Mischief (Section 10.66.040);
- I. Interference with Property (Section 10.66.020);
- J. Stalking (Section 10.16.050);
- K. Cyberstalking (Section 10.18.025);
- L. Disclosing Intimate Images (Section 10.18.027);
- M. Violation of a temporary, permanent, or final protective order issued pursuant to Chapter 7.90, 7.105, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW.

Section 7. EMC 10.23.090 is amended as follows, with strikeouts deleted and underlining added:

A. Any respondent who wilfully disobeys any temporary anti-harassment protection order or civil anti-harassment protection order issued pursuant to Chapter 10.14 RCW or 7.105 RCW, as now or hereafter amended, shall be guilty of a gross misdemeanor.

B. As used in this section, “respondent” means the respondent of a temporary anti-harassment protection order or civil anti-harassment protection order issued under Chapter 10.14 RCW or 7.105 RCW, as now or hereafter amended.

Section 8. The following is provided for reference and may not be complete:

EMC Amended by this Ordinance	Ordinance History of EMC Amended by this Ordinance
EMC 10.02.068	(Ord. 3751-20 § 1, 2020; Ord. 3234-11 § 2, 2011.)
EMC 10.02.087	(Ord. 3751-20 § 3, 2020; Ord. 3234-11 § 5, 2011.)
EMC 10.02.107	(Ord. 3751-20 § 5, 2020.)
EMC 10.16.152	(Ord. 3354-13 § 2, 2013.)
EMC 10.22.010	(Ord. 3234-11 § 7, 2011; Ord. 2467-00 § 1, 2000; Ord. 2291-98 § 1, 1998; Ord. 1807-91 § 1, 1991; Ord. 1234-86 § 1, 1986.)
EMC 10.22.020	(Ord. 3234-11 § 8, 2011; Ord. 2467-00 § 2, 2000; Ord. 2291-98 § 2, 1998; Ord. 1807-91 § 2, 1991; Ord. 1234-86 § 2, 1986.)
EMC 10.22.021	NEW SECTION, BEING ADDED BY THIS ORDINANCE
EMC 10.22.025	(Ord. 3234-11 § 9, 2011.)
EMC 10.22.030	(Ord. 3234-11 § 10, 2011; Ord. 2463-00 § 1, 2000; Ord. 2417-99 § 8, 1999; Ord. 1234-86 § 3, 1986.)
EMC 10.22.040	(Ord. 3565-17 § 1, 2017; Ord. 3354-13 § 6, 2013; Ord. 3234-11 § 11, 2011; Ord. 3140-09 § 1, 2009; Ord. 3026-07 § 1, 2007; Ord. 2919-06 § 2, 2006; Ord. 2466-00 § 1, 2000; Ord. 2291-98 § 3, 1998; Ord. 1807-91 § 3, 1991; Ord. 1234-86 § 4, 1986.)
EMC 10.22.050	(Ord. 3234-11 § 12, 2011; Ord. 2465-00 § 1, 2000.)
EMC 10.22.060	(Ord. 3654-19 § 4, 2019; Ord. 3234-11 § 13, 2011; Ord. 2919-06 §§ 1, 3, 2006.)
EMC 10.23.050	(Ord. 3496-16 § 3, 2016; Ord. 3067-08 § 5, 2008; Ord. 1521-88 §§ 1, 6, 1988.)
EMC 10.23.090	(Ord. 1521-88 §§ 1, 10, 1988.)

Section 9. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 10. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 11. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 12. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Cassie Franklin, Mayor

ATTEST:

City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____