

ORDINANCE NO. 24-1204

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND, WASHINGTON, REPEALING SECTION 9.90.020 OF THE MUNICIPAL CODE TO COMPLY WITH STATE LAW REGARDING DRUG PARAPHERNALIA; AMENDING SECTION 9.90.010 FOR CLARIFICATION; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Washington State Legislature adopted SB 5536, which took effect on July 1, 2023, and established new state laws regulating the use and possession of controlled and counterfeit substances; and

WHEREAS, SB 5536 also changed state laws regarding drug paraphernalia, declaring that the state of Washington “fully occupies and preempts the entire field of drug paraphernalia regulation within the boundaries of the state, including regulation of the use, selling, giving, delivery, and possession of drug paraphernalia,” subject only to limited exceptions for locally established “harm reduction services”; and

WHEREAS, section 9.90.020 of the Black Diamond Municipal Code (BDMC), which broadly prohibits possession of drug paraphernalia, now conflicts with state law as adopted by SB 5536 and is therefore preempted and unenforceable; and

WHEREAS, the City Council desires to clarify that the City’s adoption of state criminal offenses into the City code includes any subsequently enacted changes to the referenced RCWs by the state Legislature;

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

Section 1. Section 9.90.020 BDMC Repealed. Section 9.90.020 of the Black Diamond Municipal Code is hereby repealed in its entirety.

Section 2. Section 9.90.010 BDMC Amended. The introductory sentence of Section 9.90.010 of the Black Diamond Municipal Code, but not the table of RCW sections referenced therein, is hereby amended to read as follows:

The following statutes regarding controlled substances and drug paraphernalia, as currently enacted or subsequently amended by the Washington State Legislature, are incorporated by reference:

[Table of offenses follows]

Section 3. Severability. If any section, paragraph, sentence, clause, or phrase of this Ordinance, or its application to any person or circumstance, is declared unconstitutional or otherwise invalid for any reason, or if any portion of this Ordinance is pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 4. Publication and Effective Date. The Ordinance shall take effect and be in full force five days after the date of its publication in the City's official newspaper.


ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK DIAMOND AT A REGULAR MEETING THEREOF ON THE 1ST DAY OF FEBRUARY, 2024.

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: 2/2/24
Passed by the City Council: 2/1/24
Ordinance No. 24-1204
Date of Publication: 2/5/24
Effective Date: 2/10/24