

**ORDINANCE NO. 2023-20**

**AN ORDINANCE OF THE CITY OF RICHLAND, WASHINGTON,  
AMENDING CHAPTER 9.04 OF THE RICHLAND MUNICIPAL  
CODE RELATED TO CRIMES AGAINST PERSONS.**

**WHEREAS**, the City has need, from time to time, to update the Richland Municipal Code (RMC) to bring it into alignment with state and federal law; and

**WHEREAS**, the Washington State Legislature recently made significant changes to strengthen the crimes of cyber harassment and stalking which should be adopted in the City of Richland; and

**WHEREAS**, on June 27, 2023, the United State Supreme Court held in *Counterman v. Colorado* that statutes that criminalize true threats require proof that the defendant consciously disregarded a substantial risk that his or her communications would be viewed as threatening violence in order to comply with First Amendment protections; and

**WHEREAS**, the City’s harassment statute would benefit from additional language identifying the City’s obligation to show that the defendant had some subjective understanding of the threatening nature of his or her words.

**NOW, THEREFORE, BE IT ORDAINED** by the City of Richland as follows:

Section 1. Chapter 9.04 of the Richland Municipal Code, entitled Crimes Against Persons, as first enacted by Ordinance No. 99-76, and last amended by Ordinance No. 07-21, is hereby amended as follows:

**Chapter 9.04  
CRIMES AGAINST PERSONS**

**Sections:**

- 9.04.010 Simple assault.**
- 9.04.020 Harassment.**
- 9.04.030 Intimidation.**
- 9.04.040 Provoking assault.**
- 9.04.045 Use of force – When allowed.**
- 9.04.050 Harassing telephone calls.**
- 9.04.060 Solicitation of a minor.**
- 9.04.070 Reckless endangerment – Second degree.**
- 9.04.080 Stalking – Penalties.**
- 9.04.085 Cyber harassment. ~~Cyberstalking.~~**
- 9.04.090 Coercion.**
- 9.04.100 Leaving a child in the care of a sex offender.**
- 9.04.110 Criminal mistreatment – Fourth degree.**

**9.04.010 Simple assault.**

A. No person may intentionally use, or threaten to use by purposeful words or acts, unlawful physical force against the person of another.

B. A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.

C. Any defense available to a person charged with the crime of “assault in the fourth degree” under RCW 9A.36.041 shall also be a defense to the crime of simple assault under this section.

D. Any crime charged under this section shall be a gross misdemeanor.

**9.04.020 Harassment.**

A. It is unlawful for any person, without lawful authority, to knowingly threaten:

1. To cause bodily injury immediately or in the future to the person threatened or to any other person; or
2. To cause physical damage to the property of a person other than the actor; or
3. To subject the person threatened or any other person to physical confinement or restraint; or
4. To maliciously do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety.

B. The person by words or conduct recklessly places the person threatened in reasonable fear that the threat will be carried out. “Words or conduct” includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

C. Every person convicted of a violation of the provisions of this section shall be guilty of harassment, a gross misdemeanor.

**9.04.030 Intimidation.**

A. It is unlawful for any person to carry, exhibit or display any instrument or weapon apparently capable of producing bodily harm in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons; provided, however, that this section shall not apply to nor affect:

1. Any act committed by a person while in his place of abode or fixed place of business;
2. Any peace officer;
3. Any person lawfully acting in self-defense or acting in the lawful defense of another;
4. Any person making or assisting in making a lawful arrest for the commission of a felony; or
5. Any person engaged in military activities authorized by state or federal government.

B. Every person convicted of a violation of the provisions of this section shall be guilty of intimidation, a misdemeanor.

**9.04.040 Provoking assault.**

It is unlawful for any person to willfully provoke or attempt to provoke, by word, sign or gesture, another person to commit an assault or breach of the peace. Every person convicted of a violation of the provisions of this section shall be guilty of provoking assault, a misdemeanor.

**9.04.045 Use of force – When allowed.**

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

A. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer’s direction;

B. Whenever necessarily used by a person arresting one who has committed a felony and delivering him or her to a public officer competent to receive him or her into custody;

C. Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

D. Whenever reasonably used by a person to detain someone who enters or remains unlawfully in a building or on real property lawfully in the possession of such person, so long as such detention is reasonable in duration and manner to investigate the reason for the detained person’s presence on the premises, and so long as the premises in question did not reasonably appear to be intended to be open to members of the public;

E. Whenever used by a carrier of passengers or the carrier’s authorized agent or servant, or other person assisting them at their request, in expelling from a carriage, railway car, vessel, or other vehicle, a passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force used is not more than is necessary to expel the offender with reasonable regard to the offender’s personal safety;

F. Whenever used by any person to prevent a mentally ill, mentally incompetent or mentally disabled person from committing an act dangerous to any person, or in enforcing necessary restraint for the protection or restoration to health of the person, during such period only as is necessary to obtain legal authority of the restraint or custody of the person.

**9.04.050 Harassing telephone calls.**

A. It is unlawful for any person, with intent to harass, intimidate, torment or embarrass any other person, to make a telephone call to such other person:

1. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues; or
2. Using any lewd, lascivious, profane, indecent or obscene words or language, or suggesting the commission of any lewd or lascivious act; or
3. Threatening to inflict injury on the person or property of the person called or any member of his family; or

4. Without purpose of legitimate communication.

B. Any offense committed by use of a telephone as set forth in this section may be deemed to have been committed either at the place from which the telephone call or calls were made or at the place where the telephone call or calls were received. Every person convicted of a violation of the provisions of this section shall be guilty of making harassing telephone calls, a gross misdemeanor.

**9.04.060 Solicitation of a minor.**

It is unlawful for any person to solicit, entice, or otherwise communicate with a child under the age of 18 years for immoral purposes. Every person convicted of a violation of the provisions of this section shall be guilty of solicitation of a minor, a gross misdemeanor, except if:

A. The person has previously been convicted under this section or of a felony sexual offense under Chapter 9.68A, 9A.44, or 9A.64 RCW; or

B. Any other felony sexual offense in this or any other state; or

C. The person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of electronic communication.

**9.04.070 Reckless endangerment – Second degree.**

A person is guilty of reckless endangerment in the second degree when he or she recklessly engages in conduct not amounting to reckless endangerment in the first degree as defined by RCW 9A.36.045, but which creates a substantial risk of death or serious physical injury to another person. Reckless endangerment is a gross misdemeanor.

**9.04.080 Stalking – Penalties.**

A. A person commits the crime of stalking if, without lawful authority ~~and under circumstances not amounting to a felony attempt of another crime~~ the person:

1. Intentionally and repeatedly harasses another person;

~~2.1. He or she intentionally and repeatedly follows another person to that person's home, school, place of employment, business, or any other location, or follows the person while the person is in transit between locations; and~~ or

3. Intentionally contacts, follows, tracks, or monitors, or attempts to contact, follow, track, or monitor another person after being given actual notice that the person does not want to be contacted, followed, tracked, or monitored; or

4. Knowingly and without consent installs or monitors an electronic tracking device, or causes an electronic tracking device to be installed, placed, or used, to track the location of another person; and

B2. The person being harassed, followed, tracked, or monitored suffers substantial emotional distress is intimidated, harassed, or is placed in fear that the stalker intends to injure him or her, or another person, the person or his or her property of the person being followed or the property of another person, or, in the circumstances identified in (A)(4), the victim's knowledge of the tracking device would reasonably elicit substantial emotional distress or fear. The feeling of substantial



emotional distress or fear, intimidation, or harassment must be one that a reasonable person in the same situation would experience under all given the totality of the circumstances; ~~and~~

~~3. The stalker either:~~

~~a. Intends to frighten, intimidate, or harass the person being followed; or~~

~~b. Knows or reasonably should know that the person being followed is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person;~~

~~4. A person who commits the crime of stalking under this subsection (A) is guilty of a gross misdemeanor except under the conditions defined in subsection (E) of this section.~~

CB. It is not a defense to the crime of stalking in this section where:

1. Under subsections (A)(~~3~~1), (~~2~~) and (~~4a~~) of this section the stalker was not given actual notice that the person ~~being followed~~ did not want the stalker to contact, ~~or~~ follow, track, or monitor him or her the person; or

2. Under subsection (A)(~~1~~3)(~~b~~) of this section the stalker did not intend to frighten, or intimidate, ~~or harass~~ the person or place the person in substantial emotional distress. being followed.

DC. It shall be a defense to the crime of stalking that the defendant is a licensed private detective acting within the capacity of his or her license as provided by Chapter 18.165 RCW.

E. D. Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitute prima facie evidence that the stalker intends to intimidate or harass the person. The provisions of this section do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

1. A law enforcement officer, judicial officer, probation or parole officer, or other public employee when any such person is engaged in the lawful performance of official duties and in accordance with state or federal law;

2. The installation, placement, or use of an electronic tracking device authorized by an order of a state or federal court;

3. A legal guardian for a disabled adult or a legally authorized individual or organization designated to provide protective services to a disabled adult when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services;

4. A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor;

5. An employer, school, or other organization, who owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement

with the employer, school, or other organization and the use of the device is limited to recovering lost or stolen items; or

6. The owner of fleet vehicles, when tracking such vehicles. For the purposes of this section, “fleet vehicle” means any of the following:

(a) One or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes;

(b) Motor vehicles held for lease or rental to the general public; or

(c) Motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

**FE.** A person who stalks another person is guilty of a gross misdemeanor, except that the person is guilty of a Class **EB** felony if any of the following applies:

1. The stalker has previously been convicted in this state or any other state of any crime of harassment as defined in RMC 9.04.020 or RCW 9A.46.060, ~~of the same victim or members of the victim’s family or household member or any person specifically named in a no-contact order or no-harassment order;~~ or

2. The person stalking violates any protective order ~~a court order issued pursuant to RMC 9.07.020 or RCW 9A.46.040~~ protecting the victim ~~person being stalked;~~ or

3. The stalker has previously been convicted of a gross misdemeanor or felony stalking offense for stalking another person; or

4. The stalker was armed with a deadly weapon as defined in RCW 9.94A.825 while stalking the victim person; or

5. The ~~stalker’s~~ victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; ~~or~~ community corrections officer; an employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties, or to influence the victim’s performance of official duties; or

6. The ~~stalker’s~~ victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim’s testimony or potential testimony.

**GF.** Definitions as used in this section:

1. “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, in addition to any other form of communication, contact, or conduct, the sending of an electronic

communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of “course of conduct.”

2. “Electronic tracking device” means an electronic device that permits a person to remotely determine or monitor the position and movement of another person, vehicle, device, or other personal possession. As used in this subsection (6)(e), “electronic device” includes computer code or other digital instructions that once installed on a digital device, allows a person to remotely track the position of that device.

3. “Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the **alleged** stalker repeatedly and deliberately appears at the person’s home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the **alleged** stalker follows the person. It is not necessary to establish that the **alleged** stalker follows the person while in transit from one location to another.

4. “Harasses” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, torments, or is detrimental to such person, and which serves no legitimate or lawful purpose. ~~unlawful harassment as defined in RMC 9.04.020 or RCW 10.14.020.~~

5. “Protective order” means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

6. “Repeatedly” means on two or more separate occasions.

**9.04.085 Cyber harassment. Cyberstalking.**

A. A person is guilty of cyber harassment cyberstalking if the person he or she, with intent to harass; or intimidate; ~~or torment~~ any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to ~~such other~~ that person or a third party and the communication:

1. Using Uses any lewd, lascivious, indecent, or obscene words, images, or language, or suggests ~~ing~~ the commission of any lewd or lascivious act;

2. Is made Anonymously or repeatedly; ~~whether or not conversation occurs~~; or

3. Threatening Contains a threat to inflict bodily injury immediately or in the future on the person threatened or to any other person; or ~~or property of the person called or any member of his or her family or household.~~

4. Contains a threat to damage, immediately or in the future, the property of the person threatened or of any other person; and

B. With respect to any offense committed under the circumstances identified in subsection (A)(3) or (A)(4):

1. Would cause a reasonable person, with knowledge of the sender's history, to suffer emotional distress or to fear for the safety of the person threatened; or



2. Reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety.

**CB.** Cyberstalking is a gross misdemeanor, except as provided in subsection (**DE**) of this section.

**DE.** Cyberstalking is a Class C felony if either of the following applies:

1. The perpetrator has previously been convicted in this state or any other state of the crime of harassment, as defined in RCW 9A.46.060, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order ~~in this or any other state~~; or

2. The perpetrator engages in the behavior prohibited under subsection (A)(3) of this section by threatening to kill the person threatened or any other person;

3. The person cyber harasses a criminal justice participant or election official who is performing the participant's official duties or election official's official duties at the time the communication is made;

4. The person cyber harasses a criminal justice participant or election official because of an action taken or decision made by the criminal justice participant or election official during the performance of the participant's official duties or election official's official duties; or

5. The person commits cyber harassment in violation of any protective order protecting the victim.

**ED.** Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

**FE.** For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

#### **9.04.090 Coercion.**

A. A person is guilty of coercion if, by use of a threat, he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

B. "Threat," as used in this section, means:

1. To communicate, directly or indirectly, the intent to immediately use force against any person who is present at the time; or

2. Threats as defined in RCW 9A.04.110(27)(a) through (f) as those subsections may be amended from time to time.

3. Coercion is a gross misdemeanor.



**9.04.100 Leaving a child in the care of a sex offender.**

A. A person is guilty of the crime of leaving a child in the care of a sex offender if the person is (1) the parent of a child; (2) entrusted with the physical custody of a child; or (3) employed to provide to the child the basic necessities of life, and leaves the child in the care or custody of another person who is not a parent, guardian, or lawful custodian of the child, knowing that the person is registered or required to register as a sex offender under the laws of this state, or a law or ordinance in another jurisdiction with similar requirements, because of a sex offense against a child.

B. It is an affirmative defense to the charge of leaving a child in the care of a sex offender under this section that the defendant must prove by a preponderance of the evidence that a court has entered an order allowing the offender to have unsupervised contact with children, or that the offender is allowed to have unsupervised contact with the child in question under a family reunification plan, which has been approved by a court, the department of corrections, or the department of social and health services in accordance with department policies.

C. Leaving a child in the care of a sex offender is a misdemeanor.

**9.04.110 Criminal mistreatment – Fourth degree.**

A. A person is guilty of the crime of criminal mistreatment in the fourth degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

1. With criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or
2. With criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

B. For purposes of this section, “a person who has assumed the responsibility to provide to a dependent person the basic necessities of life” means a person other than: (1) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (2) a good Samaritan as defined in RCW 9A.42.010.

C. Criminal mistreatment in the fourth degree is a misdemeanor.

Section 2. This Ordinance shall take effect the day following its publication in the official newspaper of the City of Richland.


Section 3. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 4. 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 errors/clerical errors, section numbering, references, or similar mistakes of form.

**PASSED** by the City Council of the City of Richland, Washington, at a regular meeting on the 19<sup>th</sup> day of September, 2023.

  
Mayor

Attest:

  
Jennifer Rogers, City Clerk

Approved as to Form:

  
Heather Kintzley, City Attorney

First Reading: September 5, 2023  
Second Reading: September 19, 2023  
Date Published: September 24, 2023