

ORDINANCE 2013-3

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, RELATING TO CRIMINAL PROCEDURE; CREATING NEW CHAPTERS 9.38 AND 9.40 OF THE EATONVILLE MUNICIPAL CODE; ADDING A NEW SECTION TO CHAPTER 9.02 OF THE EATONVILLE MUNICIPAL CODE; AMENDING EMC 1.12.010 AND EMC 9.36.040; REPEALING EMC 9.36.060, PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, RCW 35.21.180 enables the Town of Eatonville to adopt sections of the Revised Code of Washington by reference;

WHEREAS, the state legislature has enacted several new laws defining misdemeanors that the Town has not yet adopted, but should do so; and

WHEREAS, the Town Council believes the public health, safety and welfare is promoted by enacting this ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Eatonville as follows:

Section 1. A new chapter is added to Title 9 of the Eatonville Municipal Code, which shall be entitled, "Domestic Violence." This new chapter shall be codified as chapter 9.38 EMC. A new section is added to chapter 9.38 EMC, to be codified as EMC 9.38.010, to read as follows:

9.38.010 – Domestic Violence – Adoption of RCWs

The following RCW chapters are hereby adopted in their entirety, including any subsequent amendments thereto: chapter 10.99 RCW, chapter 26.09 RCW, chapter 26.10 RCW, chapter 26.20 RCW, chapter 26.23 RCW, chapter 26.26 RCW, chapter 26.33 RCW, chapter 26.34 RCW; chapter 26.44 RCW, chapter 26.50 RCW, chapter 74.34 RCW.

Section 2. A new chapter is added to Title 9 of the Eatonville Municipal Code, which shall be entitled, "Adoption of RCW Sections Not Specifically Set Forth." This new chapter shall be codified as chapter 9.40 EMC. A new section is added to chapter 9.40 EMC, to be codified as EMC 9.40.010, to read as follows:

9.40.010 – Adoption of RCW sections not specifically set forth

A. With the exception of the RCW section set forth in subsection (C) of this section, and notwithstanding the RCW sections that are specifically adopted by reference in the EMC, and in particular titles 9 and 10, all RCW sections that constitute misdemeanors and gross

misdemeanors and the RCW sections necessary for the investigation, arrest, prosecution, sentencing, confinement, and enforcement of misdemeanors and gross misdemeanors are hereby adopted by reference as currently enacted or as hereafter amended or recodified from time to time, and shall be given the same force and effect as if set forth herein in full.

B. All class C felony crimes set forth in the RCW are hereby adopted by reference for the purposes of charging a gross misdemeanor for a violation of any of the crimes set forth in chapter 9A.28 RCW.

C. The following RCW sections, and any amendments thereto, are not adopted by the Town of Eatonville: RCW 9A.16.110 (Defending against violent crime – Reimbursement).

Section 3. A new section is added to chapter 9.02 EMC, to be codified at EMC 9.02.005, and shall read as follows:

9.02.005 – Definitions and General Provisions

A. As used in this title, “RCW” shall mean the Revised Code of Washington.

B. As used in this title, “EMC” shall mean the Eatonville Municipal Code.

C. By adopting Washington state statutes by reference in this title, and in other titles, the town intends to assume jurisdiction over and become the jurisdictional authority for the enforcement and prosecution (whether directly or, per the direction of the Council, through another municipality or political subdivision through an interlocal agreement under RCW 39.34.180) of misdemeanor and gross misdemeanor crimes committed within the town of Eatonville. Whenever the word “state” shall appear in any statute adopted by reference in this title, and in other titles, the word “town” shall be substituted therefor; PROVIDED, however, the term “town” shall not be substituted for the term “state” in those circumstances that set forth administrative or licensing duties of the state and/or its departments and/or its subdivisions.

D. Whenever a state statute adopted in this title, and in other titles, refers to another state statute not specifically adopted in this title, the statute referred to shall be given the force and effect necessary to enforce the statute adopted in this title.

E. Any state statute that is adopted by reference in this title, and in other titles, and which is later amended, repealed, or recodified shall remain in full force and effect until the effective date of the legislative act that repeals, recodifies, or amends the state statute. The amendment or recodification of any state statute adopted by reference in this title shall retain its full force and effect as part of this title subsequent to the effective date of its amendment or recodification.

F. When issuing a citation, information, or complaint for the violation of any section of the RCW adopted by this title, it shall be sufficient for a commissioned officer or prosecutor to cite to and refer to the RCW section number.

G. Title, chapter, section and subsection captions are for organizational purposes only and shall not be construed as part of this title.

H. The provisions of this title do not apply to or govern the construction of or punishment of any offense committed prior to the effective date of this title or to the construction and application of any defense to a prosecution for such offense. Such an offense shall be construed and punished according to the provisions of the law existing at the time of the commission of the offense in the same manner as if this title had not been enacted.

I. As used in this title, words used in the present tense include future tense; the masculine includes feminine and neutral genders; and the singular includes the plural and vice versa.

J. The provisions of this title are not intended to create any duty to individuals or to any particular class of individuals, but rather are enacted as duties owed to the public in general.

K. Unless otherwise provided in this title, violation of any provision of this title shall be punishable by:

1. Gross misdemeanor. Every person convicted of a gross misdemeanor shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than up to three hundred sixty four (364) days, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000), or by both such imprisonment and fine.

2. Misdemeanor. Every person convicted of a misdemeanor shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than

one thousand dollars (\$1,000), or by both such imprisonment and fine.

L. Violations of other titles of the Eatonville Municipal Code designated as gross misdemeanors or misdemeanors shall, notwithstanding contrary criminal penalty provisions of those titles, be punishable as follows.

1. Gross misdemeanor. Every person convicted of a gross misdemeanor shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than up to three hundred sixty four (364) days, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000), or by both such imprisonment and fine.

2. Misdemeanor. Every person convicted of a misdemeanor shall be punished by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine.

Section 4. Section 1 of Ordinance 90-1, codified as EMC 1.12.010, is amended to read as follows:

1.12.010 – Designated

A. Unless otherwise specifically provided, any person violating any provisions or failing to comply with any of the mandatory requirements of the ordinances of the town is guilty of a misdemeanor, punishable in accordance with EMC 9.02.005. ~~Any person convicted of a misdemeanor under the ordinances of the town shall be punished by a fine of not more than \$5,000, by imprisonment not to exceed one year, or by both such fine and imprisonment.~~

B. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of the ordinances of the town is committed, continued or permitted by any such person, and he shall be punished accordingly.

Section 5. Section 6 of Ordinance 79-2, codified as EMC 9.36.060, is hereby amended to read as follows.

9.36.040 Forfeitures allowable.

~~All misdemeanors are forfeitable upon the recommendation of the town attorney and with the concurrence of the court~~ In addition to the

adoption of other RCW sections permitting forfeiture, including but not limited to RCW 69.50.505 as adopted in EMC 9.13.030, the following RCW sections are hereby adopted to permit forfeiture proceedings to be commenced under circumstances allowed therein: chapter 9A.83 RCW; chapter 10.105 RCW. Nothing in this section shall be construed to permit the forfeiture of bail in exchange for dismissal of charges.

Section 6. Section 63 of Ordinance 90-34, Section 5 of Ordinance 79-2, and EMC 9.36.060, are hereby repealed.

Section 7. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 8. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 02/11/2013

2ND READING: ___/___/2013 / 2ND READING WAIVED (EMC 2.04.009(C))

Passed by the Council of the Town of Eatonville at a regular meeting held this _____ day of _____, 2013.

Ray Harper, Mayor

ATTEST:

Kathy Linnemeyer, Town Clerk

APPROVED AS TO FORM:

Daniel G. Lloyd, Town Attorney

PATTERSON BUCHANAN
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To: Eatonville Town Council (Councilmember Valentine, Councilmember Gribi,
Councilmember Schaub, Councilmember Pierce, Councilmember Bowman)

CC: Mayor Ray Harper
Town Administrator Doug Beagle

Date:

From: DGL

Subject: Town of Eatonville – Ordinance 2013-3

The purpose of this memorandum is to provide context for the various sections in Ordinance 2013-3, which is being submitted to Council for review and passage. As you know, the City of Bonney Lake assumed the prosecution of all crimes committed in the Town of Eatonville pursuant to the interlocal agreement passed by Council. During this process, it came to our attention that the Eatonville municipal code fails to adopt all necessary provisions of the Revised Code of Washington.

The necessity of taking this action did not become clear until April 19, 2012, when the Washington Supreme Court decided *City of Auburn v. Gauntt*, 174 Wn.2d 321 (2012). In that case, the Supreme Court threw out the conviction of an Auburn. The Court held that the City could not prosecute the person for violating a state law that the City had not adopted.

Title 9 of the EMC adopts many RCWs, but much has changed since the Council adopted Ordinance 90-34, the last time the Council took a comprehensive review of its criminal code. Moreover, the *Gauntt* case arose out of the legislature's passage of RCW 39.34.180 in 1996, which was after Ordinance 90-34 was passed. As such, now is the proper time to examine our criminal code and ensure that it is up to date.

Section 1 of Ordinance 2013-1 ensures the the Town has adopted all relevant domestic violence laws. In particular, RCW 10.99.080 permits the court to assess a penalty of \$100 per conviction, the funds of which are to be used to fund domestic violence advocacy. Adopting chapter 10.99 RCW in its entirety does this.

Section 2 is a catch all. This language is patterned after that used by the City of Vancouver. Municipalities like Eatonville can prosecute only for gross misdemeanors (punishable by up to 364 days in jail and a \$5,000 fine) and misdemeanors (punishable by up to 90 days in jail and a \$1,000 fine). They cannot prosecute felonies (punishable by imprisonment of 1 year or more), which are the responsibility of the County Prosecuting

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Attorney. The reference in subsection B to class C felonies refers to the concept of “anticipatory” offenses, such as attempt and conspiracy. If someone attempts to commit a class C felony, then it constitutes a gross misdemeanor. Adopting this section enables the town to prosecute for such “attempted” crimes by adopting class C felonies under this context. Subsection C does not adopt the section requiring the municipality to pay a criminal defendant if he/she is successful in avoiding conviction through self-defense.

Section 3 of Ordinance 2013-3 clarifies general concepts and punishments that should be at the beginning of our criminal code rather than scattered throughout. In particular, EMC 9.36.060 incorrectly assesses a punishment of 364 days in jail and a \$5,000 fine for misdemeanors, not gross misdemeanors. This is contrary to state law. RCW 9A.04.040(2). Subsections K and L define what punishments are given to misdemeanors for violations of title 9 EMC (subsection K) and any other title of the EMC (subsection L).

Section 4 of Ordinance 2013-3 amends our general penalty ordinance to be consistent with the new EMC 9.02.005(K)-(L). It still provides that the presumptive criminal definition is a misdemeanor, but it now refers to EMC 9.02.005 to define the penalty.

Section 5 of Ordinance 2013-3 deletes language that is technically contrary to state law. Bail forfeitures are no longer allowed under state law. The concept of “forfeiture” now appears in various statutes, in which a person forfeits property and/or money if it is used in certain crimes (e.g., drugs, felonies, money laundering). The added language directly adopts these forfeiture statutes. The statute addressing drug forfeiture (RCW 69.50.505) is already adopted by EMC 9.13.030, which explains the opening wording of the section.

Section 6 eliminates EMC 9.36.060, which is now covered by the penalty sections of EMC 9.02.005. The language in EMC 9.36.060 essentially adopted the general penalty ordinance, which as discussed above was contrary to RCW 9A.04.040. Given the adoption of EMC 9.02.005, this section becomes superfluous.

Section 7 is a severability clause, and Section 8 provides the effective date.

We have presented a draft of this ordinance to the new prosecutor, and she agrees that it should be adopted.

DGL/dgl