

COUNCIL COMMUNICATION

Meeting Date: October 26, 2021	Agenda Item: 10C	Agenda Location: Consent Calendar	Goal(s):	Legal Review: <i>TY</i>	<input type="checkbox"/> 1 st Reading <input checked="" type="checkbox"/> 2 nd Reading
Subject: An ordinance repealing Section 38-270 of the Thornton City Code, pertaining to Unlawful Use of Telephones and amending Thornton City Code, Chapter 38, Section 38-209.5, pertaining to Harassment.					
Recommended by: Terrence Gordon <i>TG</i>				Approved by: Kevin S. Woods <i>KW</i>	
Presenter(s): Chad Parker, Police Division Commander				Ordinance previously introduced by: <hr/> Acunto	

SYNOPSIS:

This ordinance updates Section 38-209.5: Harassment to more closely reflect State law and address modern communication methods and cyberbullying. The ordinance also incorporates Section 38-270: Unlawful Use of Telephones into the updated City Code and then repeals Section 38-270 as it is redundant.

RECOMMENDATION:

Staff recommends Alternative No. 1, adopt the ordinance repealing Section 38-270 and amending Section 38-209.5 as proposed.

BUDGET/STAFF IMPLICATIONS:

None.

ALTERNATIVES:

1. Adopt the ordinance amending Section 38-209.5 and repealing Section 38-270.
2. Do not adopt the ordinance amending Section 38-209.5 and repealing Section 38-270.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

Currently the ordinance criminalizes offensive contact, obscene language and actions in public places, and repeatedly calling a person’s home phone while disturbing the peace and enjoyment in the targeted person’s home.

In addition to the current ordinance, the State Statute criminalizes following a person in a public place, repeatedly insulting or taunting another person, and harassment by text, computer, instant message, and other electronic mediums.

With the advent of the internet and communication technologies, the nature of harassment has changed. Today, harassment rarely occurs by calling a person’s home phone with the purpose of disturbing their peace and enjoyment of the home and instead is most often committed through the use of smart phone apps like Snapchat, Instagram, Facebook, WhatsApp, and others, especially with juveniles – this practice is commonly referred to as cyberbullying. As it stands now, the City Code does not allow the City Attorney’s Office to prosecute these types of incidents.

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Further, following a person in public with the intent to harass is not a crime under City law and the City Prosecutors have had to dismiss such cases in the past.

The City's Harassment Code was last updated in 2006, before the advent of these technologies. Aurora, Colorado Springs, Fort Collins, Westminster, and many other municipalities have updated their harassment ordinances to follow the State Statute.

INTRODUCED BY: Acunto

AN ORDINANCE REPEALING SECTION 38-270 OF THE THORNTON CITY CODE, PERTAINING TO UNLAWFUL USE OF TELEPHONES AND AMENDING THORNTON CITY CODE, CHAPTER 38, SECTION 38-209.5, PERTAINING TO HARASSMENT.

WHEREAS, the City currently regulates unlawful use of telephones, pursuant to Section 38-270; and

WHEREAS, the City's harassment ordinance has not been updated to reflect societal technological changes; and

WHEREAS, the City finds these Code amendments are necessary to promote the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 38-270 "Unlawful Use of Telephones" is hereby repealed in its entirety.
2. Section 38-209.5 "Harassment" of the Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

Sec. 38-209.5 - Harassment

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) Electronic communication means a communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at a specific individual.

(2) Electronic communication device includes a telephone, a cellular telephone, a facsimile machine, electronic mail, a pager, a computer, or another device or medium that can be used to communicate electronically.

(3) Intimate part means the buttocks or genitals of any person or the areola of a woman's breast.

(4) Unless the context otherwise requires, “obscene behavior or action” means a patently offensive sexual act not for the purpose of sexual arousal including, but not limited to, episodes of nudity by exposing the bare skin of any intimate part or committing an act by the grabbing, touching, slapping, or caressing of ones own or other persons intimate parts including touching the clothes covering such intimate parts.

(5) Unless the context otherwise requires, “obscene language or gesture” means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including, but not limited to, masturbation, cunnilingus, fellatio, anilingus, or excretory functions.

(6) “Personal identifying information” includes, but is not limited to:

- a. name;
- b. birth date;
- c. address;
- d. telephone number;
- e. drivers license number;
- f. Social Security number;
- g. place of employment;
- h. employee identification numbers or other personal identification numbers;
- i. mother's maiden name;
- j. electronic identification numbers;
- k. electronic signatures;
- l. any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses;
- m. a photograph or any other realistic likeness.

~~(a)~~ (b) A person commits harassment if, with intent to harass, annoy, or alarm another person, such person:

- (1) Strikes, shoves, kicks, or otherwise touches or subjects a person to physical contact or threatens damage to such person's property;
or
- (2) Makes repeated communications which invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; ~~or~~

(3) In a public place, or place reasonably expected to be viewed by public, directs obscene language or makes an obscene gesture to or at another person, or participates in obscene behavior or action;
or

~~(4) In a public place, or place reasonably expected to be viewed by public, participates in obscene behavior or action~~ Follows a person in or about a public place.

~~(b) As used in this section, unless the context otherwise requires, obscene language or gesture means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including, but not limited to, masturbation, cunnilingus, fellatio, anilingus, or excretory functions.~~

~~(c) As used in this section, unless the context otherwise requires, obscene behavior or action means a patently offensive sexual act not for the purpose of sexual arousal including, but not limited to, episodes of nudity by exposing the bare skin of any intimate part or committing an act by the grabbing, touching, slapping or caressing of ones own or other persons intimate parts, including touching the clothes covering such intimate parts.~~

~~(d) For the purposes of this section, the term "intimate part" means the buttocks or genitals of any person or the areola of a woman's breast.~~

(c) Electronic communication harassment

A person is guilty of electronic communication harassment if with intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(1) makes repeated contact by means of electronic communications, regardless of whether a conversation ensues; or

(2) after the recipient has requested or informed the person not to contact the recipient, the person repeatedly or continuously:

a. contacts the electronic communication device of the recipient;
or

b. causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication; or

- (3) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person, or attempts to extort money or other thing of value.
- (d) A person who electronically publishes, posts, or otherwise discloses personal identifying information of another individual in a public online site or forum with the intent to harass, abuse, threaten, or incite violence against such other individual is guilty of electronic communication harassment.
- (e) Any act prohibited by paragraph (e) of subsection (1) of this section may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail, or other electronic communication was either made or received.
- (f) The normal use of the telephone or other electronic medium for the purpose of requesting payment of debts or obligations or for other legitimate purposes shall not constitute a violation of this section.

3. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
5. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
6. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on October 12, 2021.

PASSED AND ADOPTED on second and final reading on _____, 2021.

CITY OF THORNTON, COLORADO

Jan Kulmann, Mayor

ATTEST:

Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

Tami Yellico, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on October 13, 2021, and after second and final reading on _____, 2021.