

AGENDA REQUEST FORM

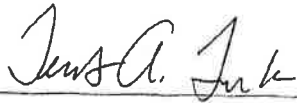
FOR: Council Meeting of September 1, 2020

FROM: Council Member Teresa Turk

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND §130.01 ADOPTION OF STATE CRIMINAL CODE OF THE FAYETTEVILLE CODE TO INCLUDE A HATE CRIME COMPONENT WITHIN CITY PROSECUTIONS OF CERTAIN STATE CRIMINAL MISDEMEANORS

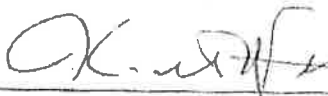
APPROVED FOR AGENDA:



Council Member Teresa Turk

8/17/20

Date



City Attorney Kit Williams

Approved as to form

August 17, 2020

Date

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §130.01 **ADOPTION OF STATE CRIMINAL CODE OF THE FAYETTEVILLE CODE** TO INCLUDE A HATE CRIME COMPONENT WITHIN CITY PROSECUTIONS OF CERTAIN STATE CRIMINAL MISDEMEANORS

WHEREAS, the vast majority of states recognize that when certain crimes are committed to hurt or terrorize persons because of their race, religion, gender, gender identity, sexual orientation, disability or national origin, such especially reprehensible and unacceptable conduct should be properly identified and criminally punished as “hate crimes;” and

WHEREAS, the Legislature has enacted A.C.A. §16-123-106, **Hate offenses** to authorize a civil action for intimidation, harassment, violence or vandalism directed at a victim because of racial, religious or ethnic animosity, but such victims deserve further protection; and

WHEREAS, Arkansas is one of the last states in our nation which ignores the intentionally cruel and terrorizing nature of these hate crimes by failing to label them as hate crimes or to criminally punish the perpetrators for these hate crimes; and

WHEREAS, the City of Fayetteville wishes to do everything legally possible to shine the light on those who commit such hate crimes; and

WHEREAS, the City Council is “authorized and empowered to prohibit and punish any act, matter, or thing which the laws of this state make a misdemeanor” (A.C.A. §14-55-501); and

WHEREAS, “the penalties fixed by a city must fall within the state minimums and maximums,” *Ford v. City of Hot Springs*, 294 Ark. 435, 743 S.W. 2d 394, 395 (1988); and

WHEREAS, a city ordinance based upon a state law making an act a misdemeanor must have the exact same punishment provision as that state criminal law and may neither exceed nor allow “less severe penalties... than are prescribed for similar offenses against the state laws” (A.C.A. §14-55-502 **State law to be followed**); and

WHEREAS, when a criminal commits acts in such manner as to be guilty of a state misdemeanor and commits such criminal conduct with the intention to hurt or terrorize the victim or others because of their race, religion, gender, gender identity, national origin, sexual orientation, or disability, the City Prosecutor should be able to present evidence of such hate crime intention to the Court and jury.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends **Article I §130.01 Adoption of State Criminal Code** by repealing it in its entirety and enacting a replacement **Article I §130.01** as follows:

“130.01 Adoption by Reference of Appropriate State Criminal Misdemeanor Statutes as Violations of the Fayetteville Code with the Authorization for the Fayetteville City Prosecutor to also Prove a Hate Crime Element for such Violation.

(A) This section shall be called the “*Hate Crime Recognition as Deterrence Code.*”

(B) The City of Fayetteville hereby adopts by reference the *Arkansas State Criminal Code* for the following misdemeanors found within that Code and determines that any person who would be guilty of a misdemeanor pursuant to one of the below listed crimes and also commits such criminal conduct with the intention or purpose to hurt, intimidate or terrorize the victim or others because of their actual or perceived race, religion, gender, gender identity, national origin, sexual orientation or disability would be guilty of violating this *Hate Crime Recognition as Deterrence Code* and subject to the exact penalties prescribed for these misdemeanors pursuant to State Law.

- (1) **Battery in the Third Degree**, A.C.A. §5-13-203
- (2) **Assault in the Second Degree**, A.C.A. §5-13-206
- (3) **Assault in the Third Degree**, A.C.A. §5-13-207
- (4) **Coercion**, A.C.A. §5-13-208
- (5) **Terroristic Threatening**, A.C.A. §5-13-301
- (6) **Arson**, A.C.A. §5-38-301
- (7) **Criminal Mischief in First Degree**, A.C.A. §5-38-203
- (8) **Criminal Mischief in Second Degree**, A.C.A. §5-38-204
- (9) **Filing False report with law enforcement agency**, A.C.A. §5-54-122
- (10) **Disorderly Conduct**, A.C.A. §5-71-207
- (11) **Harassment**, A.C.A. §5-71-208
- (12) **Harassing Communication**, A.C.A. §5-71-209
- (13) **Communication a False Alarm**, A.C.A. §5-71-210
- (14) **Threatening a fire or bombing**, A.C.A. §5-71-211
- (15) **Cyberbullying**, A.C.A. §5-71-217
- (16) **Stalking in the Third Degree**, A.C.A. §5-71-229(c)

This adoption by reference of the above listed sections of the *Arkansas Criminal Code* shall also include any and all future amendments to those identified sections relating to misdemeanors and punishments therefor.

(C) The City Prosecutor shall report annually during the first City Council meeting in May of the number of suspects that the City Prosecutor’s Officer has prosecuted under this *Hate Crimes Recognition as Deterrence Code* and the number of guilty verdicts, guilty or no contest pleas obtained for the previous annual period ending March 31.

(D) Severability. If any word, phrase, clause, sentence, item, paragraph, section, or title of this ordinance or of the *Hate Crimes Recognition as Deterrence Code* is declared or adjudged to be illegal, invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the ordinance or *Code* which shall remain in full

force and effect as if the portion so declared or adjudged illegal, invalid or unconstitutional was not originally a part of the ordinances or *Code*.

PASSED and **APPROVED** this 1st day of September, 2020.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer