

ORDINANCES
SECOND READING/RECOMMENDATIONS

Description of Vote:

Maker/Second Ayes/Noes/Abstain/Absent

Legend:

JD: Dear ES: Santarina DH: Davis-Holmes MG: Gipson AR: Robles

ITEM NO.	ORD. NO.	TITLE	DISPOSITION
27	14-1535	AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, ADDING CHAPTER 16 TO TITLE 4 OF THE CARSON MUNICIPAL CODE ADOPTING AN ANTI-BULLYING ORDINANCE	Introduced:05/07/14 Item No. 26 ES/MG 5/0

ORDINANCE NO. 14-1535

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARSON, CALIFORNIA, ADDING CHAPTER 16 TO TITLE 4
OF THE CARSON MUNICIPAL CODE ADOPTING AN ANTI-
BULLYING ORDINANCE

WHEREAS, bullying and cyberbullying is a serious and widespread problem and generally has been found to occur in all cities and states in the country; and,

WHEREAS, federally collected data indicates that nationwide, 28% of students in grades 6-12 are the victims of an incident of bullying; and,

WHEREAS, bullying and cyberbullying are often underreported and are a significant safety problem; and,

WHEREAS, bullying and cyberbullying has been statistically linked to serious health and safety impacts to those who are bullied and, in some cases, those who bully; and,

WHEREAS, in a 2010 study of 2,000 high school students, it was found that both victims and perpetrators of bullying were more likely to have attempted suicide than those who were neither bullied nor bullied anyone; and,

WHEREAS, suicide has been identified by the Center for Disease Control as the third leading cause of death in teenagers; and,

WHEREAS, victims of bullying and cyberbullying are statistically more likely to have suicide ideation and suicide attempts, have mental health problems, including depression, use drugs and alcohol, skip school, have poor academic performance, drop-out of school, cheat, and have low self-esteem; and,

WHEREAS, people who bully others have been shown to have a higher risk of abusing alcohol and drugs; be more likely to get into fights and vandalize property and drop out of school; be more likely to engage in early sexual activity and are more likely to have criminal convictions as adults; and,

WHEREAS, one study showed that 60% of boys who bullied others in middle-school were convicted of at least one crime as an adult, compared to 23% of boys who did not bully; and,

WHEREAS, witnesses of bullying suffer negative consequences, including using more tobacco, alcohol and drugs, having increased mental health problems, including depression and anxiety, and are more likely to miss or skip school; and,

WHEREAS, bullying and cyberbullying have negative societal consequences and results in costs to taxpayers and the government; and,

WHEREAS, although, bullying and cyberbullying tend to victimize specific populations at a significantly higher rate (such as obese, chronically ill, disabled, gifted, sexual minority youth), people of all demographics can be subject to bullying; and,

WHEREAS, sexual minority youth (including, gay, lesbian, bisexual and transgender) have been found to be bullied two to three times more than heterosexual minors; and,

WHEREAS, over 85% of sexual minority youth experience harassment and are three times more likely to not feel safe at school; and,

WHEREAS, 90% of sexual minority youth have been harassed or assaulted during the past year; and,

WHEREAS, the proliferation of computers, tablets and smart phones with internet access has led to a dangerous form of bullying known as cyberbullying; and,

WHEREAS, cyberbullying may include sending hurtful, rude and mean text messages; spreading rumors or lies about others by email or social networks; and creating websites, videos or social medial profiles that embarrass, humiliate or make fun of others; and,

WHEREAS, cyberbullying is especially pernicious because it can occur 24 hours a day, 7 days a week with little effort by the person doing the bullying; and,

WHEREAS, in cyberbullying, harassing, embarrassing, humiliating or threatening messages and pictures can be shared with a group of people, an entire school or anyone with access to the internet, and there are no practical means to remove a messages and pictures once posted to the internet; and,

WHEREAS, there are no federal laws that address bullying and cyberbullying; and,

WHEREAS, the State of California has several laws that address bullying and cyberbullying in schools under the Education Code that are some of the best in the nation, but the ultimate punishment for bullying and cyberbullying under these statutes is limited to expulsion or some other form of school discipline; and,

WHEREAS, there are no penal codes in the State that deal specifically with bullying and cyberbullying, and such laws that do exist address some types of bulling activities; assault (CPC 240), stalking (CPC 646.9), identity theft (CPC 528.5(a)), child cruelty (CPC 273a(b)), disturbing the peace (CPC 415), criminal threats (CPC 422), and annoying/threatening communication (CPC 653(m)); but leave significant and unregulated gaps; and,

WHEREAS, case law has demonstrated that courts are reluctant to find minors guilty of the "adult" crimes such as, stalking or threatening communication, even when bullying actions appear to fall within the defined crime; and,

[MORE]

WHEREAS, bullying and cyberbullying, can and do take place in many places not limited to the traditional schoolyard or locker room, including on buses, on streets and sidewalks and in front of computers in homes and in libraries; and,

WHEREAS, the City Council of the City of Carson, desires to provide criminal penalty for those who engage in bullying of school age children from kindergarten through age 25, at a level and in such a manner that it may be expected to lead to physical and mental harm to the subject of the bullying and cyberbullying; and,

WHEREAS, the City of Carson will work with state lawmakers to create a Penal Code that will address bullying and cyberbullying.

NOW, THEREFORE, the CITY COUNCIL of the CITY of CARSON, CALIFORNIA, does hereby ordain as follows:

Section 1. Chapter 16 is added to Title 4 of the Carson Municipal Code to read as follows:

**“CHAPTER 16
ANTI-BULLYING, INCLUDING CYBER-BULLING, AND HARASSMENT**

Sections:

- § 41601 Findings and Purpose.**
- § 41602 Definitions.**
- § 41603 Prohibited Conduct.**
- § 41604 Constitutionally Protected Activity.**
- § 41605 Parental Responsibility.**
- § 41606 Enforcement.**

41601 Findings and Purpose.

The City Council finds and determines the following:

- A. Bullying and cyberbullying are a serious public health and safety issue for the nation, the state and the city.
- B. Bullying and cyberbullying are associated with serious mental and physical health issues, up to and including suicide. Suicide is the third leading cause of deaths in teenagers.
- C. Bullying and cyberbullying is associated with societal problems that results in costs to the taxpayers, including through minors dropping out of school, abusing drug and alcohol and engaging in criminal activity.
- D. This ordinance is intended to provide additional tools to law enforcement officers and schools to address the worst cases of bullying and cyberbullying that may lead to physical and mental harm to minors in the City of Carson.

[MORE]

WHEREAS, bullying and cyberbullying, can and do take place in many places not limited to the traditional schoolyard or locker room, including on buses, on streets and sidewalks and in front of computers in homes and in libraries; and,

WHEREAS, the City Council of the City of Carson, desires to provide criminal penalty for those who engage in bullying of school age children from kindergarten through age 25, at a level and in such a manner that it may be expected to lead to physical and mental harm to the subject of the bullying and cyberbullying; and,

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**“CHAPTER 16
ANTI-BULLYING, INCLUDING CYBER-BULLING, AND HARASSMENT**

Sections:

§ 41601	Findings and Purpose.
§ 41602	Definitions.
§ 41603	Prohibited Conduct.
§ 41604	Constitutionally Protected Activity.
§ 41605	Parental Responsibility.
§ 41606	Enforcement.

41601 Findings and Purpose.

The City Council finds and determines the following:

- A. Bullying and cyberbullying are a serious public health and safety issue for the nation, the state and the city.
- B. Bullying and cyberbullying are associated with serious mental and physical health issues, up to and including suicide. Suicide is the third leading cause of deaths in teenagers.
- C. Bullying and cyberbullying is associated with societal problems that results in costs to the taxpayers, including through minors dropping out of school, abusing drug and alcohol and engaging in criminal activity.
- D. This ordinance is intended to provide additional tools to law enforcement officers and schools to address the worst cases of bullying and cyberbullying that may lead to physical and mental harm to minors in the City of Carson.

[MORE]

E. This ordinance should be interpreted to comply with all federal and state laws, including those intended to protect the rights of individuals, including minors, in freedom of speech.

41602 Definitions.

As used in this section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

A. "Bullying," including bullying by means of electronic communication devise(s) (commonly referred to as "cyberbullying") shall mean a willful course of conduct which involves harassment of a person(s) from kindergarten through age 25.

B. "Course of Conduct" shall mean a pattern of conduct composed of a series of overt acts over a period of time, however short, evidencing a continuity of purpose.

C. "Harassment" shall mean any conduct, whether verbal, physical, written, or by means of any mode of communication (including, but not limited to, harassment by means of electronic communication devise(s) [commonly referred to as "cyber bullying"] which:

1. Would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested and which serves no legitimate purpose; or

2. Is prohibited by California Penal Code Sections 240, 242, 273a(b), 415, 422, 528.5(a), 646.9, and 653(m); and is intended to seriously alarm, annoy, torment, or terrorize a reasonable person with no legitimate purpose.

41603 Prohibited Conduct.

A. It shall be unlawful for any person to engage in any bullying or cyberbullying of a person or induce another person to engage in such bullying.

B. It shall be unlawful for any person to retaliate against any person that reports any conduct which is prohibited by this chapter.

41604 Constitutionally Protected Activity.

This chapter shall not be construed to apply to any constitutionally protected activity or freedom of speech.

[MORE]

41605 Parental Responsibility.

It shall be unlawful for any custodial parent or guardian of any unemancipated person under eighteen (18) years of age to allow or permit such person to violate the provisions of Section 41603. The fact that prior to the present offense a parent, guardian or custodian was informed in writing by a law enforcement officer of a separate violation of Section 41603 by the same minor occurring within ninety (90) days prior to the present offense shall constitute a rebuttable presumption that such parent, guardian or custodian allowed or permitted the present violation.

It shall be unlawful for any person over the age of 18 to engage in or encourage any person to engage in bullying or cyberbullying or be in violation of section 41603. Any person who violates section 41603 will be subject to the enforcement of Section 41606

41606 Enforcement.

Any person who is eighteen (18) years or older or an emancipated minor who violates this chapter shall be guilty of a misdemeanor, unless charged as an infraction, at the discretion of the enforcing officer.

Any unemancipated person under the age of eighteen (18) years who violates this chapter shall:

(1) on the first offense be guilty of an infraction, punishable by a fine not exceeding \$100.00;

(2) on the second offense be guilty of an infraction, punishable by a fine not exceeding \$200.00;

(3) on each additional violation be guilty of a misdemeanor, unless charged as an infraction, at the discretion of the enforcing officer. If charged as an infraction, it shall be punishable by a fine not exceeding \$500.00.

Notwithstanding the foregoing, any person who violates this chapter may be issued an administrative citation pursuant to the procedures in Chapter 2.5.”

Section 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this section, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this section, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

[MORE]

Section 3. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance.

Section 4. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this ____ day of _____, 2014.

Mayor Jim Dear

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney