

ORDINANCE**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. Section 8-4-127 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

8-4-127 Cyberstalking, harassment through electronic communications, and cyber-flashing.

(a) *Definitions.* For purposes of this Section, the following definitions shall apply:

(1) "Harass" means to engage in a knowing and willful course of conduct directed at a specific person that alarms, torments, ~~or terrorizes,~~ or otherwise causes that person to fear for their safety or the safety of a third party or to suffer from unreasonable emotional distress, including injury to reputation or to professional or financial standing.

(2) "Intimidate" has the meaning ascribed to the term "intimidation" in Section 12-6 of the Illinois Criminal Code, codified at 720 ILCS 5/12-6.

~~(2)~~ (3) "Electronic communication" means any transfers of signs, signals, writings, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectric or photo-optical system.

~~—(3)~~ "Electronic communication" includes transmissions through an electronic device including, but not limited to, a telephone, cellular phone, computer, or pager, which communication includes, but is not limited to, e-mails, posts on a social media website, instant messages, text messages, or voicemails. ~~by a computer through the Internet to another computer.~~

(4) "Family or household member" includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who shared or formerly shared a common dwelling, persons who have or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this ~~ordinance-section~~, neither a casual acquaintanceship nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute a dating relationship.

(5) "Cyber-flashing" means to knowingly and without lawful justification send an intimate image to another person through the use of data-dropping technology without the request or express consent of the person.

(6) "Data-dropping technology" means technology that enables the transfer of files, including, but not limited to, pictures, videos, or texts, using wireless local area networking devices to cellular telephone users located within close proximity with the sender. The term "data-dropping technology" does not include transferring of files through e-mail, telephone text messaging, or by posting on social media networks.

(7) "Intimate body parts" means the genitals, pubic area or anus of any individual.

(8) "Intimate image" means a photograph, film, videotape, recording or any other reproduction of an image of an individual with fully or partially exposed intimate body parts or engaged in sexual activity.

(9) "Sexual activity" means: (i) human genitals in a state of sexual stimulation or arousal; (ii) acts of human masturbation, sexual intercourse or sodomy; or (iii) fondling or other erotic touching of intimate body parts.

(10) "Electronic monitoring software or spyware" means software or an application that surreptitiously tracks computer activity on a device and records and transmits the information to third parties with the intent to cause injury or harm; provided however, software and applications utilized in furtherance of the prevention of fraud or crime or of protecting the security of networks, online services, applications, software, other computer programs, users, or electronic communication devices or similar devices shall not be considered "electronic monitoring software or spyware" for the purposes of this section.

(11) "Spoofing" means falsifying the name or phone number appearing on a caller identification system.

(b) *Cyberstalking*. No person shall engage in cyberstalking ~~cyberstalk~~ another. Cyberstalking is an act committed when one knowingly and without lawful justification, on at least two ~~(2)~~ separate occasions, harasses or intimidates another person through the use of electronic communication and:

(1) At any time transmits a threat of ~~immediate or~~ future bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family or household member of that person, or a threat of future injury to the property of such person; ~~or~~

(2) Places that person or a family or household member of the person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint;

(3) Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent with an intent to offend;

(4) Solicits, induces, or otherwise directs the commission of an act by any person which would be a violation of this Code or State law directed towards that person, their property, or a family or household member of that person; or

(5) Solicits, induces, or otherwise directs the actions of a third party to violate this subsection, without regard to the mental state of the third party, and without regard to whether the third party has received compensation or other consideration.

(c) *Harassment through electronic communications*. No person shall engage in harassment through electronic communications. Harassment through electronic communications is an act committed when one uses electronic communication to harass or intimidate another, without legal justification and the alleged violator knows or should know that such electronic communication would harass or intimidate a reasonable person, and:

(1) At any time transmits a threat of immediate bodily harm, sexual assault, confinement, or restraint and the threat is directed towards that person or a family or household member of that person, or a threat of immediate injury to the property of such person;

(2) Creates or maintains an Internet website, social media account, or other webpage which is accessible to one or more third parties for a period of at least 24 hours, and which contains statements harassing or intimidating another person, including by impersonating or falsely representing themselves as such person in violation of subsection (c)(5);

(3) Surreptitiously installs or otherwise places an electronic monitoring software or spyware on an electronic communication device, an electronic tracking device or other means of recording or tracking a person's location on such person or their property, or otherwise places a person under digital or electronic surveillance;

(4) Transmits an electronic communication or knowingly induces a person to transmit an electronic communication for the purpose of harassing or intimidating another person who is under 13 years of age, regardless of whether the person under 13 years of age consents to the harassment or intimidation, if the alleged violator is at least 16 years of age at the time of the alleged offense;

(5) Intentionally and without consent impersonates or otherwise falsely represents themselves as another person, a public official or employee, a peace officer or law enforcement officer, or the parent or legal guardian of a minor child in an electronic communication, to either harass or intimidate any person, or to cause any recipient to reasonably believe that such person authorized or transmitted the electronic communication, including through spoofing, using false self-identifying information as means to facilitate unauthorized contact with another person, or otherwise referencing the name, voice, signature, likeness, persona, domain address, phone number, or any other piece of identifying information belonging to another person; or

(6) Solicits, induces, or otherwise directs the actions of a third party to violate this subsection, without regard to the mental state of the third party, and without regard to whether the third party has received compensation or other consideration.

(d) Exceptions. Subsections (b) and (c) of this section shall not apply to: (1) an exercise of the right to free speech or assembly that is otherwise lawful, including, but not limited to works of art, commentary, satire, or parody; or (2) any law enforcement agency or law enforcement officer acting within the scope of their employment and pursuant to a criminal investigation which is otherwise lawful.

(e) Cyber-flashing. No person shall engage in cyber-flashing.

(d)-(f) Violation and penalty. Any person who violates this section, upon conviction thereof, shall be punished by a fine of no more than \$500.00 for the first offense. Subsequent convictions shall be punished by a fine of no more than ~~\$1,000.00~~ \$5,000. In addition to such fines, any such offense may also be punished as a misdemeanor by incarceration in a penal institution other than a penitentiary for a term of up to ~~ninety (90)~~ 180 days or by a requirement to perform up to 1,500 hours of community service under the procedures set forth in Section 1-2-1.1 of the Illinois Municipal Code, as amended, and in the Illinois Code of Criminal Procedure of 1963, as amended, in a separate proceeding. All actions seeking the imposition of fines only shall be filed as quasi-criminal actions subject to the provisions of the Illinois Code of Civil Procedure, as amended. Nothing in this section shall preclude a victim from seeking any other remedies otherwise available under applicable law, including, but not limited to, an order of protection, a no contact order, restraining order, or similar court order prohibiting an alleged violator from contacting such victim or a family or household member.

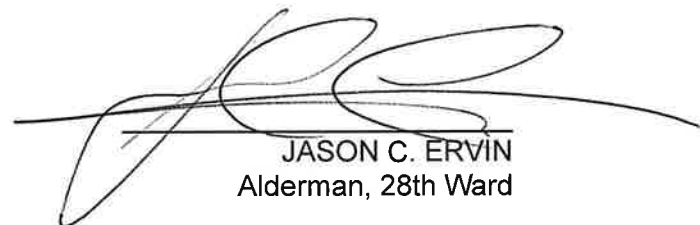
~~(e)-(g)~~ *Construction*. Nothing in this Section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:

- (1) an interactive computer service, as defined in 47 U.S.C. § 230(f)(2);
- (2) a provider of public mobile services or private radio services, as defined in Section 13-214 of the Public Utilities Act, codified at 220 ILCS 5/13-214; or
- (3) a telecommunications network or broadband provider.

SECTION 2. Within six months of the effective date of this section, and subject to the availability of duly appropriated funds, the Superintendent of Police shall take all necessary actions to establish a unit within the Police Department whose primary responsibility is the investigation of violations of this ordinance or similar violations of State or federal law.

SECTION 3. Section 2 of this ordinance shall take effect upon passage. Section 1 of this ordinance shall take effect 10 days after passage and publication.


11th Ward.


JASON C. ERVIN
Alderman, 28th Ward
