

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

..title

AN ORDINANCE relating to the City’s criminal code; removing the separate crime of malicious harassment and creating a special allegation of hate crime motivation; and amending Section 12A.06.115 of the Seattle Municipal Code.

..body

WHEREAS, hate crimes in Washington state are currently prosecuted as “malicious harassment”

in both felony and misdemeanor forms; and

WHEREAS, Seattle’s misdemeanor malicious harassment law is limited to covering crimes

based on the protected classes of homelessness, marital status, political ideology, age, or

parental status; and

WHEREAS, the state felony malicious harassment law covers the protected classes of race,

color, religion, ancestry, national origin, gender, sexual orientation, mental handicap,

physical handicap, and sensory handicap; and

WHEREAS, the Seattle City Auditor released a report on May 9, 2019, finding that reports of

hate crimes have risen by almost 400 percent since 2012; and

WHEREAS, the City Auditor’s report indicated that crimes of malicious harassment increased

346 percent since 2012; and

WHEREAS, the City Auditor’s report found that crime with bias elements increased 378 percent

since 2012 and non-criminal bias incidents increased 448 percent since 2012; and

WHEREAS, in the 2019 legislative session the Washington Legislature enacted Engrossed

Substitute House Bill 1732, which changed the name of the felony malicious harassment

offense to “hate crime offense” and clarified terms for people with disabilities and for

gender identity; and

1 WHEREAS, creating a misdemeanor special allegation for hate crimes in Seattle would allow for  
2 hate and bias crimes that are prosecuted as misdemeanors to be designated and identified  
3 as hate crimes; and

4 WHEREAS, removing malice from the elements to be proven in the special allegation allows  
5 prosecution of hate or bias crimes at the misdemeanor level for protected classes  
6 currently covered by the state felony law and City-level protected classes, which are race,  
7 color, religion, ancestry, national origin, gender, sexual orientation, mental handicap,  
8 physical handicap, and sensory handicap, homelessness, marital status, political ideology,  
9 age, or parental status; NOW, THEREFORE,

10 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

11 Section 1. Section 12A.06.115 of the Seattle Municipal Code, last amended by Ordinance  
12 123395, is amended as follows:

13 **12A.06.115 ((~~Malicious harassment.~~) Hate crime motivation**

14 ((~~A. A person is guilty of malicious harassment if he or she~~)) In a prosecution for assault  
15 under Section 12A.06.010, harassment under Section 12A.06.040, or property destruction under  
16 Section 12A.08.020 any misdemeanor or gross misdemeanor under the Seattle Municipal Code,  
17 the City Attorney may file a special allegation of hate crime motivation when the defendant  
18 ((~~maliciously and~~)) intentionally commits ((~~one (1) of the following acts~~)) the act because of  
19 ((~~his or her~~)) the defendant's perception of another person's race, color, religion, ancestry,  
20 national origin, gender, sexual orientation, gender expression or identity, mental ~~handicap~~  
21 disability, physical ~~handicap~~ disability, sensory ~~handicap~~ disability, homelessness, marital status,  
22 political ideology, age, or parental status. Such a special allegation must be proved beyond a  
23 reasonable doubt, with either the court making a finding of fact as to this special allegation if it

1 finds the defendant guilty of the crime or, if a jury trial is had, the jury finding a special verdict  
2 as to this special allegation if it finds the defendant guilty of the crime. ((:

3 ~~1. Causes physical injury to another person; or~~

4 ~~2. By threat places another person in reasonable fear of harm to his or her person~~  
5 ~~or property or harm to the person or property of a third person; provided however, that it shall~~  
6 ~~not constitute malicious harassment for a person to speak or act in a critical, insulting, or~~  
7 ~~deprecatory way so long as his or her words or conduct do not constitute a threat of harm to the~~  
8 ~~person or property of another person; or~~

9 ~~3. Causes physical damage to or the destruction of the property of another person.~~

10 ~~B. "Threat" means to communicate, directly or indirectly, the intent to:~~

11 ~~1. Cause bodily injury immediately or in the future to another; or~~

12 ~~2. Cause damage immediately or in the future to the property of another; or~~

13 ~~3. Subject another person to physical confinement or restraint.~~

14 ~~C.)) For purposes of this ((section: "Homelessness")) Section 12A.06.115,~~

15 ~~"homelessness" means the status or condition of being without a home, including, but not limited~~  
16 ~~to, the state of living in the streets.~~

17 ~~((D. Every person who, in the commission of malicious harassment, shall commit any~~  
18 ~~other crime, may be punished therefor as well as for the malicious harassment, and may be~~  
19 ~~prosecuted for each crime separately.))~~

20 D. When sentencing or imposing conditions on a person convicted of or given a  
21 deferred sentence or a deferred prosecution or who has entered into a statutory or non-statutory  
22 diversion agreement on a misdemeanor or gross misdemeanor with a special allegation of hate  
23 crime motivation, the court must require, as part of the sentence or conditions, that the person

1 fulfill the terms of a program, attend a training, or perform community service designed to  
2 educate persons committing the offense about the negative consequences of hate crimes or bias  
3 crimes committed against the protected class of the victim of the offense. The court may waive  
4 this requirement where such a program, training, or community service opportunity is  
5 unavailable or impractical or upon a finding of good cause by the court.

6 E. The City Attorney's Office shall provide an annual report to the City Council each  
7 year on the special allegations filed under this Section 12A.06.115. This report shall include  
8 data on the demographics of defendants and the protected class status of victims.

9 Section 2. The provisions of this ordinance are declared to be separate and severable. The  
10 invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance,  
11 or the invalidity of its application to any person or circumstance, does not affect the validity of  
12 the remainder of this ordinance or the validity of its application to other persons or  
13 circumstances.

1           Section ~~23~~. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4           Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, ~~2018~~  
5 2019, and signed by me in open session in authentication of its passage this \_\_\_\_ day of  
6 \_\_\_\_\_, ~~2018~~ 2019.

7 \_\_\_\_\_  
8 President \_\_\_\_\_ of the City Council

9           Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2018~~ 2019.

10 \_\_\_\_\_  
11 Jenny A. Durkan, Mayor

12           Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, ~~2018~~ 2019.

13 \_\_\_\_\_  
14 Monica Martinez Simmons, City Clerk

15 (Seal)