

CITY OF LAFAYETTE

ORDINANCE NO. 13, Series 2022

INTRODUCED BY: Councilor Nicole Samson

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE,
COLORADO, AMENDING SECTION 75-143, HARASSMENT, OF THE CODE
OF ORDINANCES, CITY OF LAFAYETTE**

WHEREAS, the Colorado Supreme Court issued a decision on March 28, 2022, in *People v. Moreno*, Case No. 21SA181, holding that the phrase, “intended to harass” in Colorado’s criminal harassment statute, Section 18-9-111(1)(e), C.R.S. (also known as the “Harassment - Kiana Arellanos Law”), is unconstitutionally overbroad and impermissibly restricts protected speech; and

WHEREAS, the Court found that, given the widespread use of electronic communication and social media, the phrase “intended to harass” could impermissibly encroach on a wide range of protected speech and legitimate communications made via the web, email, instant messaging, telephone, computer networks, etc.; and

WHEREAS, the City’s harassment offense set forth in Section 70-143, of the Code of Ordinances, City of Lafayette, Colorado, is modeled after the State’s offense and thus must be amended.

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

Section 1. That section 75-143, Harassment, of the Code of Ordinances, City of Lafayette, Colorado, is hereby amended to read as follows:¹

- (a) It shall be unlawful to commit harassment. A person commits harassment if, with intent to harass, annoy, or alarm another person, he or she:
- (1) Strikes, shoves, kicks, or otherwise touches or subjects a person to physical contact;
 - (2) In a public place directs obscene language or makes an obscene gesture to or at another person;
 - (3) Follows a person in or about a public place;
 - (4) Initiates communication with a person, anonymously or otherwise by telephone, telephone network, data network, text message, instant message, computer, computer network, or computer system in a manner intended to ~~harass or~~ threaten bodily injury or property damage, or makes any comment, request, suggestion, or

¹ Additions to the current text of the Code are indicated by underlining, and deletions are indicated by ~~striketrough~~.

proposal by telephone, or computer, computer network, or computer system that is obscene;

- (5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
- (6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
- (7) Repeatedly insults, taunts, challenges or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.

(b) Any act prohibited by subsections (4) and (5) 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.

(c) As used in this section, unless the context otherwise requires, the term "obscene" 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 masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(d) This section is not intended to infringe upon any right guaranteed to any person by the First Amendment to the United States Constitution or article II, section 10 of the Colorado Constitution, or to prevent constitutionally protected expression of any religious, political, or philosophical views.

Section 2. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 4. The repeal or modification of any provision of the Code of Ordinances, City of Lafayette, Colorado, 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. 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 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.

Section 5. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 6. Violations of this ordinance shall be punishable in accordance with Section 1-10 of the Code of Ordinances, City of Lafayette, Colorado.

Section 7. This ordinance shall become effective upon the latter of the 10th day following enactment, or the day following final publication of the ordinance.

INTRODUCED AND PASSED ON FIRST READING THE 19 DAY OF APRIL 2022.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THE 3 DAY OF MAY, 2022.

CITY OF LAFAYETTE, COLORADO

Jaideep Mangat, Mayor

ATTEST:

Lynnette Beck, City Clerk

APPROVED AS TO FORM:

Mary Lynn Macsalka, City Attorney