

ORDINANCE NO. 11-2020

**AN ORDINANCE TO ESTABLISH AN ENHANCED PENALTY FOR CERTAIN MISDEMEANORS THAT QUALIFY AS A HATE CRIME, OR AS HATE INTIMIDATION; TO DECLARE AND EMERGENCY; AND FOR OTHER PURPOSES.**

WHEREAS, criminal offenses occur throughout the United States on a daily basis called “hate crimes” where persons are victimized because of their immutable characteristics such as race, religion, or sexual orientation; and,

WHEREAS, because hate crime victims are interchangeable and random, these crimes terrorize the entire victim’s community and often lead to similarly terrorizing retaliatory hate crimes against the perpetrator’s community; and,

WHEREAS, the State of Arkansas is one of five (5) states that do not have a Hate Crime Law in place, and does not require any particular record keeping of hate crimes occurring within the State; and,

WHEREAS, the City of Helena-West Helena, Arkansas, wishes to act now so that the enhanced penalties can be imposed, and better record keeping of such events can be maintained.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HELENA-WEST HELENA, ARKANSAS:**

**Hate Intimidation**

**Section 18-117 – Definitions.** As used in this article:

**“Deadly Weapon”** means:

- (A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or,
- (B) Anything that in the manner of its use or intended use is capable of causing death or serious physical injury.

**“Motor Vehicle”** means a self-propelled, motorized vehicle capable of being operated on a roadway upon or in which a person or property is or may be transported or drawn upon a public or private road or public or private land.

(A) “Motor vehicle” includes without limitation:

- (1) An all-terrain vehicle; or,
- (2) A vehicle designed to be used for agricultural purposes, such as a tractor; or,
- (3) A motor vehicle designed to assist a person with a physical disability with walking; or,
- (4) A motorized scooter or other vehicle designed to be used as a toy by a child; or,
- (5) A bicycle equipped with a small motor designed to assist the bicycle operator and that is not operated at a speed of greater than twenty (20) miles per hour (MPH); or,
- (6) A riding lawnmower that is not operated on a public roadway; or,
- (7) An electric personal assistive mobility device that is designed to not be capable of a speed of more than twenty (20) MPH.

(B) “Motor vehicle” does not include a device moved by human power or used exclusively upon stationary rails or tracks.

**“Negligent”** or an equivalent term such as “negligence” or “with negligence” means:

- (A) A person acts negligently with respect to attendant circumstances or a result of his or her conduct when the person should be aware of a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur.
- (B) The risk must be of such a nature and degree that the actor’s failure to perceive the risk involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation considering the nature and purpose of the actor’s conduct and the circumstances known to the actor.

**“Occupiable Structure”** means a vehicle, building, or other structure:

- (A) In which any person, including one (1) or more individuals under eighteen (18) years old, lives or carries on a business or other calling; or,
- (B) In which people assemble for a purpose of business, government, education, religion, entertainment, or public transportation; or,
- (C) That is customarily used for overnight accommodation of any person, including one (1) or more individuals under eighteen (18) years old, whether or not a person is actually present.

“Occupiable structure” includes each unit of an occupiable structure divided into a separately occupied unit.

**“Person”** means an individual eighteen (18) years old or older

**“Physical Injury”** means the:

- (A) Impairment of physical condition; or,
- (B) Infliction of substantial pain; or,
- (C) Infliction of bruising, swelling, or a visible mark associated with physical trauma.

**“Premises”** means an occupiable structure and any real property.

**“Property”** means real property or tangible or intangible personal property, including money or any paper or document that represents or embodies anything of value.

**“Public Building”** means a structure owned, operated, or occupied by any agency of the State of Arkansas or its political subdivisions or by any agency of the United State Government.

**“Purposely”** or an equivalent term such as “purpose”, “with purpose”, “intentional”, “intentionally”, “intended”, or “with intent to” means that a person acts purposely with respect to his or her conduct or a result of his or her conduct when it is the person’s conscious object to engage in conduct of that nature or to cause the result.

**“Vehicle”** means any craft or device designed for the transportation of a person or property across land or water or through the air.

**“Vital Public Facility”** means a facility maintained for use for:

- (A) Public communication, transportation, or supply of water, gas, or power,
- (B) Law enforcement;
- (C) Fire protection;
- (D) Civil or national defence; or,
- (E) Other public service.

#### **Section 18-118 – Hate Offense.**

A person eighteen (18) or older violates this Article by reason of the actual or perceived race, color, creed, religion, ancestry, gender, gender identity, sexual orientation, physical or mental disability, or national origin of another individual or group individuals, regardless of the existence of any other motivating factor or factors, the person commits any of the following misdemeanors under State Law within the city limits of Helena-West Helena;

- (A) With the purpose of causing physical injury to a person, the person causes physical injury to any person;
- (B) The person recklessly causes physical injuries to another person;
- (C) The person causes physical injury to another person by means of a deadly weapon;

- (D) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance;
- (E) The person, with the purpose of terrorizing another person, threatens to cause physical injury or property damage to another person;
- (F) The person recklessly destroys or damages property and the actual damage or destruction is One Thousand Dollars (\$1,000.00), or more, but less than Five Thousand Dollars (\$5,000.00);
- (G) The person:
  - 1. Starts a fire or causes an explosion with the purpose of destroying or otherwise damaging:
    - a) An occupiable structure or motor vehicle that is the property of another person and causes damage of Five Hundred Dollars (\$500.00) or less; or
    - b) Any property, whether it belongs to the person, or is property of another person for the purpose of collecting insurance of Five Hundred Dollars (\$500.00) or less for the destroyed or damaged property; or,
    - c) Any property, whether it belongs to the person, or is the property of another person, any negligently creates a risk of death or serious physical injury to any person; or,
    - d) A vital public facility and causes damage of Five Hundred Dollars (\$500.00) or less; or,
    - e) Dedicated church property used as a place of worship exempt from taxes pursuant to Arkansas State Law and causes damage of Five Hundred Dollars (\$500.00) or less; or,
    - f) Any public building or occupiable structure that is either owned or leased by the State or any political subdivision of the State and causes of damage of Five Hundred Dollars (\$500.00) or less; or,
    - g) An area of real property being used for commercial growth or timber or other agricultural product, if:
      - i. Timber or other agricultural product is destroyed or made commercially nonviable and, has a value that is less than Five Thousand Dollars (\$5,000.00).
- (H) The person purposely:
  - 1. Defaces, mars, desecrates, or otherwise damages:
    - a) A public monument; or ,
    - b) A work of art on display in any public place; or,

c) A place of worship, cemetery or burial monument; or

d) Removes a broken or unbroken, commercial or rock, grave marker for any reason except for cleaning or repair by a family member, caretaker, or preservation organization; and,

2. The value of repairing or replacing the damaged object does not exceed Five Hundred Dollars (\$500.00).

(I) The person recklessly destroys or damages property and the actual damage or destruction is less than One Thousand Dollars (\$1,000.00); or

(J) The person purposely apprehension of imminent physical injury in another person.

### **Section 18-119 Penalties**

(A) A person convicted of, who pleads guilty or *nolo contendere* to, a violation of Section 18-118 (a), (b), (c), (d), (e), (f), (g), or (h), shall be subject to:

1. A fine up to:

a) One Thousand Dollars (\$1,000.00) for a first such offense; or,

b) Two Thousand Dollars (\$2,000.00) for a second such offense; or,

c) Four Thousand Dollars (\$4,000.00) for a third offense or any offense after a third offense; and; or,

2. A sentence of up to one (1) year imprisonment in the County Jail; or,

3. A combination of a fine and imprisonment; and,

4. Mandatory supervised release for a period of up to one (1) year, regardless of how many days have been served in the County Jail, which may include the payment of a Probation Fee, and participation in counselling or other Court Ordered Programs;

(B) A person convicted of, who pleads guilty or *nolo contendere* to, a violation Section 18-118 (i) shall be subject to:

1. A fine up to:

a) Seven Hundred Fifty Dollars (\$750.00) for a first such offense; or,

b) One Thousand, Five Hundred Dollars (\$1,500.00) for a second such offense; or

c) Two Thousand, Five Hundred Dollars (\$2,500.00) for a third offense or any offense after a third offense; or,

2. A sentence of up to ninety (90) days in the County Jail, or,

3. A combination of a fine and imprisonment; and,

4. Mandatory supervised released for a period of up to one (1) year, regardless of how many days have been served in the County Jail, which may include the payment

of a Probation Fee, and participation in counselling or other Court Ordered Programs;

- (C) A person convicted of, who pleads guilty or *nolo contendere* to, a violation Section 18-118 (j) shall be subject to:

1. A fine up to:
  - a) Five Hundred Thousand Dollars (\$5,000.00) for a first such offense; or,
  - b) One Thousand Dollars (\$1,000.00) for a second such offense; or,
  - c) Two Thousand Dollars (\$2,000.00) for a third offense or any offense after a third offense; or,
2. A sentence of up to thirty (30) days in the County Jail; or,
3. A combination of a fine and imprisonment.

- (D) Notwithstanding Paragraphs (a), (b), and (c) of this Section, a Court may deviate from the minimum penalties specified within the Section under the following conditions:

1. The Court determines that there are mitigating circumstances and states them on the record; and,
2. The Court concludes that the punishment for the ordinance violation, in addition to the penalty for the State Misdemeanor Violation would be excessive under the circumstances, and state why on the record.

- (E) If any part of a sentence of imprisonment pursuant to Subsections (a), (b), or (c), of this Section are suspended, the Court may also require a mandatory supervised release for a period of up to one (1) year, regardless of how many days have been served in the County Jail, which may include the payment of a Probation Fee, and participation in counselling or other Court Ordered Programs

**Section 18-120 Data Collection** The Helena-West Helena Police Departments, to the maximum extent possible, shall provide the Federal Bureau of Investigation, or any other division of the U.S. Department of Justice that collects crime statistics, and the Arkansas State Police, the Office of Attorney General, or the Office of the Prosecuting Attorney for the Sixth Judicial District, upon request, data concerning the commission of a crime motivated by hate, in part, to assure compliance with the guidelines established pursuant to the Federal Hate Crime Statistics Act.

**Section 2. General Interpretative Provisions.** This ordinance is intended to be interpreted and utilized as follows:

- (A) The decision to seek a penalty for violation of this ordinance within the corporate limits of Helena-West Helena, Arkansas, belongs exclusively to the Office of the City Attorney after consultation with law enforcement;
- (B) If, at any time, the underlying state criminal offense that is the source of the offenses listed in Section 18-118 is amended, and an offense occurs before the City has made a corresponding amendment to the provisions of this ordinance, the appropriate provision for enhancement is the one noted by the description in Section 18-118.

**Section 3. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of the ordinance.

**Section 4. Repealer.** All laws, ordinances, resolutions, or parts of the same, that are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

**Section 5. Emergency Clause.** *The ability to protect individuals from criminal offenses because of the mere fact of that individuals race color, creed, religion, ancestry, gender, gender identity, sexual orientation, physical or mental disability, or national origin, is essential to the public health, safety and welfare; an emergency is; therefore, declared to exist and this ordinance shall in full force and effect from and after the date of its passage.*

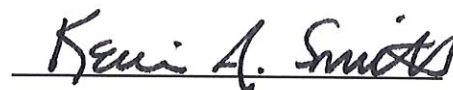
**PASSED: August 18, 2020**

**ATTEST:**

**APPROVED:**



**Sandi Ramsey, City Clerk**



**Kevin Smith, Mayor**

**APPROVED AS TO LEGAL FORM:**

  
**Andre K Valley, City Attorney**