



CITY of NOVI CITY COUNCIL

Agenda Item 3
March 26, 2018

SUBJECT: Consideration of Ordinance 18-23.31 an ordinance to amend the City of Novi Code of Ordinances at Chapter 22, "Offenses," Article III, "Offenses Against the Person," Section 22-48, "Malicious Use of Service Provided by Communications Common Carrier" to revise existing regulations to provide regulations regarding the malicious use of telecommunications – **FIRST READING**

SUBMITTING DEPARTMENT: Police/City Attorney

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

As the evolution of social media and discourse continues to develop in the digital environment, so too should the laws that govern those interactions. The City of Novi's ordinances, to date, do not contain a provision that references telecommunications services or telecommunications service providers. The proposed amendment amends Section 22-58 of the City of Novi Code of Ordinances to address the malicious use of computers and other telecommunications service devices for the purpose of harassment. Current state law, PA 557 of 2002, prohibits the "malicious use of any service provided by a telecommunications service provider with intent to terrorize, frighten, intimate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another person." It is staff's recommendation to amend the City's ordinance to reflect state law.

RECOMMENDED ACTION: Consideration of Ordinance 18-23.31 an ordinance to amend the City of Novi Code of Ordinances at Chapter 22, "Offenses," Article III, "Offenses Against the Person," Section 22-48, "Malicious Use of Service Provided by Communications Common Carrier" to revise existing regulations to provide regulations regarding the malicious use of telecommunications – **FIRST READING**



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November 1, 2017

Lieutenant Keith Wuotinen
Police Department
City of Novi
45125 Ten Mile Road
Novi, MI 48375

Re: OCA for Malicious use of Telecommunications Service

Dear Lt. Wuotinen:

Attached is a proposed draft amendment to the Section 22-58 of the City of Novi's Code of Ordinances. The amendment addresses the malicious use of computers and other telecommunications service devices for the purpose of harassment. In preparing the attached amendment, we reviewed applicable state law, MCL 750.540e; language proposed by the City Prosecutor, Scott Baker; as well as numerous other local communities' ordinances.

Current state law prohibits the malicious use of any service provided by a telecommunications service provider. The current city ordinance does not reference telecommunications services or telecommunications service providers as those terms are defined in state law. See MCL 750.219a. We believe that the ordinance should mirror state law in part because state law provides extensive definitions of telecommunications services, devices, and providers. Consequently, we amended the ordinance to prohibit the malicious use of any services provided by a telecommunications service provider in addition to a communications common carrier and/or internet service provider.

If this version meets your approval, we will recommend that it be placed on the agenda for approval at the next City Council meeting. Please feel free to contact me with any questions or concerns in regard to this matter

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Spencer M. Bondy

November 1, 2017

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CC: Sgt. Scott Baetens, Novi Police Dept.
Tom Schultz, Esq.

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 18-23.31

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES CHAPTER 22, "OFFENSES," ARTICLE III, "OFFENSES AGAINST THE PERSON," SECTION 22-48, "MALICIOUS USE OF SERVICE PROVIDED BY COMMUNICATIONS COMMON CARRIER" TO REVISE EXISTING REGULATIONS TO PROVIDE REGULATIONS REGARDING THE MALICIOUS USE OF TELECOMMUNICATIONS.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 22, "Offenses," Article III, "Offenses Against the Person," Section 22-48, "Malicious use of service provided by communications common carrier" is amended to read as follows:

Sec. 22-48. - Malicious use of service provided by a telecommunications service provider.

- (a) A person is guilty of a misdemeanor who maliciously uses any service provided by a telecommunications service provider, as defined in MCL 750.219a, including any communications common carrier and/or internet service provider, with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person or to disturb the peace and quiet of any other person by any of the following:
- (1) Threatening physical harm or damage to any person or property in the course of a conversation or message through the use of a telecommunications service or device;
 - (2) Falsely and deliberately reporting by message through the use of a telecommunications service or device that a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or of an accident;
 - (3) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device;

- (4) Using vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act in the course of a conversation or message through the use of a telecommunications service or device;
 - (5) Repeatedly initiating a telephone call and, without speaking, deliberately hanging up or breaking the telephone connection as or after the telephone is answered;
 - (6) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing his or her telecommunications service or device.
- (b) An offense shall be committed under this section if the message either originates or terminates or both originates and terminates in the city and may be prosecuted at the place of origination or termination.
- (c) As used in this section, "telecommunications," "telecommunications service," and "telecommunications device" mean those terms as defined in MCL 750.219a.

State Law reference – Similar provisions, MCL 750.540e.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date: Publication. The provisions of this Ordinance shall become effective fifteen (15) days after its adoption and shall be published within 15 days of its adoption by publication of a brief notice in a newspaper circulated in the City, stating the date of enactment and the effective date of the ordinance, a brief statement as to the subject

matter of this Ordinance and such other facts as the Clerk shall deem pertinent, and that a copy of the Ordinance is available for public use and inspection at the office of the City Clerk.

Robert J. Gatt, Mayor

Dawn Spaulding, Acting City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2018.

Dawn Spaulding, Acting City Clerk

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 18-23.31

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PART I. That Chapter 22, "Offenses," Article III, "Offenses Against The Person," Section 22-48, "Malicious use of service provided by communications common carrier" is amended to read as follows:

Sec. 22-48. - Malicious use of service provided by a telecommunications service provider. ~~communications common carrier.~~

- (a) ~~It shall be unlawful for any~~A person is guilty of a misdemeanor who maliciously uses any service provided by a telecommunications service provider, as defined in MCL 750.219a, including any communications common carrier and/or internet service provider, with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy any other person or to disturb the peace and quiet of any other person ~~or knowingly permit such conduct upon any premises owned or possessed by him or under his control~~ by any of the following:
- (1) Threatening physical harm or damage to any person or property ~~or otherwise threatening or insulting any person in the course of a telephone conversation or by written document~~in the course of a conversation or message through the use of a telecommunications service or device;
 - (2) Falsely and deliberately reporting by message through the use of a telecommunications service or device that ~~any~~a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or of an accident;
 - (3) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between

a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device;

(4) Using vulgar, indecent, obscene, or offensive ~~any sexual~~ language or suggesting any ~~sexual-lewd or lascivious~~ act in the course of a ~~telephone~~ conversation or ~~message through the use of a telecommunications service or device~~ ~~by written document~~;

(5) Repeatedly ~~initiating a telephone~~ ~~ing~~ ~~call and, without speaking,~~ ~~deliberately hanging up or breaking the telephone connection as or after the telephone is answered~~; ~~any person, whether or not conversation ensues.~~

(6) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing his or her telecommunications service or device.

(b) An offense shall be committed under this section if the message either originates or terminates or both originates and terminates in the city and may be prosecuted at the place of origination or termination.

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Dawn Spaulding, Acting City Clerk

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Dawn Spaulding, Acting City Clerk