

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance Relating to Disclosing Intimate Images, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC), and Amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC)

- _____ Briefing
- _____ Proposed Action
- _____ Consent
- _____ Action
- _____ First Reading
- _____ Second Reading
- _____ Third Reading
- _____ Public Hearing

COUNCIL BILL #
 Originating Department
 Contact Person
 Phone Number
 FOR AGENDA OF

CB1604-21

 Legal

 Flora Diaz

 425-257-7012

 April 27, 2016

Initialed by:
 Department Head
 CAA
 Council President



<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u> Ordinance (final, redlined)	<u>Department(s) Approval</u> Legal
-----------------	-------------------------	--	--

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

This proposed ordinance adopts into the Everett Municipal Code (EMC) a new gross misdemeanor crime created in the 2015 legislative session (RCW 9A.86.010) regarding the wrongful disclosure of intimate images, colloquially referred to as "revenge pornography."

As a gross misdemeanor, it is punishable by a maximum penalty of 364 days in jail and a \$5,000.00 fine.

This proposed ordinance would also incorporate the new wrongful disclosure of intimate images crime into the City's definition of Harassment (EMC 10.23.050). This means that the municipal court may better protect the public by issuing protection orders restraining a person charged with the crime of wrongful disclosure of intimate images from contacting the victim.

Finally, this proposed ordinance would adopt a new misdemeanor crime pursuant to EMC 10.18.020 for aiding/abetting the commission of the new wrongful disclosure of intimate images crime.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to Disclosing Intimate Images, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC), and Amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC).

ORDINANCE No. _____

AN ORDINANCE Relating to Disclosing Intimate Images, Amending and Adding a New Section to Ordinance No. 1145-85 as amended (Chapter 10.18 EMC), and Amending Ordinance No. 1521-88 as amended (Section 10.23.050 EMC).

Whereas, in the 2015 legislative session, the State of Washington created a new law criminalizing the wrongful disclosure of intimate images, RCW 9A.86.010. Commission of this crime under State law is a gross misdemeanor; and

Whereas, the City of Everett has the power to provide for the punishment of all practices dangerous to public health or safety, and to make necessary for the preservation of public health, peace and good order and to provide for the punishment of all persons charged with violating any city ordinances; and

Whereas, this new criminal law is related to existing criminal laws against Telephone Harassment and Cyberstalking, Chapter 10.18 EMC, and the Everett City Council therefore deems it appropriate to codify this new criminal law within Chapter 10.18 EMC; and

Whereas, the Everett City Council deems it appropriate for the City of Everett criminal laws to incorporate corresponding State law, that the City of Everett may prosecute such crimes;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Ordinance No. 1145-85, as amended by Ordinance No. 3067-08, Section 1 and by Ordinance No. 2449-00, Section 1, is hereby amended by the addition of the following section which will be codified as EMC 10.18.027:

Disclosing intimate images.

A. A person commits the crime of disclosing intimate images when the person knowingly discloses an intimate image of another person and the person disclosing the image:

1. Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;
2. Knows or should have known that the depicted person has not consented to the disclosure; and
3. Knows or reasonably should know that disclosure would cause harm to the depicted person.

B. This section does not apply to:

1. Images involving voluntary exposure in public or commercial settings; or

2. Disclosures made in the public interest including, but not limited to, the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

C. This section does not impose liability upon the following entities solely as a result of content provided by another person:

1. An interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2);
2. A provider of public or private mobile service, as defined in section 13-214 of the public utilities act; or
3. A telecommunications network or broadband provider.

D. It shall be an affirmative defense to a violation of this section that the defendant is a family member of a minor and did not intend any harm or harassment in disclosing the images of the minor to other family or friends of the defendant. This affirmative defense shall not apply to matters defined under RCW 9.68A.011.

E. For purposes of this section:

1. "Disclosing" includes transferring, publishing, or disseminating, as well as making a digital depiction available for distribution or downloading through the facilities of a telecommunications network or through any other means of transferring computer programs or data to a computer;

2. "Intimate image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

a. Sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation; or

b. A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or post-pubescent female nipple.

F. The crime of disclosing intimate images is a gross misdemeanor.

G. Nothing in this section is construed to:

1. Alter or negate any rights, obligations, or immunities of an interactive service provider under 47 U.S.C. Sec. 230; or

2. Limit or preclude a plaintiff from securing or recovering any other available remedy.

Section 2. Section 33 of Ordinance No. 1145-85, as amended by Section 2 of Ordinance No. 3067-08 (EMC 10.18.020), which reads as follows:

Permitting telephone or electronic communications device to be used for telephone harassment or cyberstalking.

Any person who knowingly permits any telephone or electronic communications device under his control to be used for any purpose prohibited by Section 10.18.010 or section 2 of this Ordinance shall be guilty of a misdemeanor.

Be and the same is hereby amended to read as follows:

Permitting telephone or electronic communications device to be used for telephone harassment, ~~or cyberstalking,~~ or disclosure of intimate images.

Any person who knowingly permits any telephone or electronic communications device under his control to be used for any purpose prohibited by Section 10.18.010, ~~or section 2 of this Ordinance 10.18.025,~~ or section 1 of this ordinance shall be guilty of a misdemeanor.

Section 3. Section 1 (part) and Section 6 of Ordinance No. 1521-88, as amended by Section 5 of Ordinance No. 3067-08 (EMC 10.23.050), which reads as follows:

Crimes included in harassment.

As used in this chapter, “harassment” may include but is not limited to any of the following crimes:

- A. Harassment (Chapter 10.23);
- B. Telephone Harassment (Section 10.18.010);
- C. Assault (Section 10.16.040);
- D. Reckless Endangerment (Section 10.16.040);
- E. Coercion (Section 10.16.040);
- F. Criminal Trespass in the First Degree (Section 10.68.030);
- G. Criminal Trespass in the Second Degree (Section 10.68.040);
- H. Criminal Mischief (Section 10.66.040);
- I. Interference with Property (Section 10.66.020);
- J. Stalking (Section 10.16.050);

K. Cyberstalking (Section 3 of this Ordinance).

L. Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW).

Be and the same is hereby amended to read as follows:

Crimes included in harassment.

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

A. Harassment (Chapter 10.23);

B. Telephone Harassment (Section 10.18.010);

C. Assault (Section 10.16.040);

D. Reckless Endangerment (Section 10.16.040);

E. Coercion (Section 10.16.040);

F. Criminal Trespass in the First Degree (Section 10.68.030);

G. Criminal Trespass in the Second Degree (Section 10.68.040);

H. Criminal Mischief (Section 10.66.040);

I. Interference with Property (Section 10.66.020);

J. Stalking (Section 10.16.050);

K. Cyberstalking (Section ~~3 of this Ordinance~~ 10.18.025);

L. Disclosing Intimate Images (Section 1 of this Ordinance).

LM. Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW).

Section 4. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby

declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 5. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 6. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. Corrections

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Ray Stephanson, Mayor

ATTEST:

City Clerk

Passed:

Valid:

Published:

Effective Date: