

Memorandum

To: Mayor Paul and Sandy Springs City Council
CC: John McDonough (City Manager); Dan Lee (City Attorney)
From: Andy Bauman, City Council, District 6
**Re: Proposed new Hate-Crime/Penalty Enhancement Ordinance
For Inclusion on the Council's Work-Session Agenda for Tuesday,
June 18, 2019**

June 14, 2019

Attached is a draft of a new ordinance I am proposing that provides enhanced penalties for certain specified municipal crimes for which it can be established, beyond a reasonable doubt, that the victim(s) was intentionally targeted because of their actual or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, physical or mental disability.

The proposed ordinance is a municipal version of so-called "Hate Crime" laws which have been adopted at the Federal level and in 45 states, but not (yet) here in Georgia.¹ Sandy Springs would be one of the first (if not first) local jurisdictions in Georgia to enact such an ordinance.

To be very clear, the Ordinance does not create a crime against merely thought or hate without an underlying crime. Under the First Amendment to the US Constitution, people cannot be prosecuted simply for their beliefs or biases. To have a hate-crime, you must prove both "hate" and a "crime". The US Department of Justice offers the following graph to describe a hate-crime:



<https://www.justice.gov/hatecrimes/learn-about-hate-crimes>

In its simplest terms, a hate-crime must include both "hate" and a "crime", and the term "hate" can be misleading. According to the US Department of Justice, "when used in a hate crime law, the word 'hate' does not mean rage or anger or general dislike. It means

bias against persons with specific characteristics as defined by the relevant law.”
(<https://www.justice.gov/hatecrimes/learn-about-hate-crimes>)

Why is this important? In 2017, (the year for which the latest data is available), there were over 7000 hate crimes **reported** across the country. (According to Justice Department Statistics, on average US residents experience an estimated 250,000 hate crime “victimizations” per year between 2004 – 2015, the majority of which were not reported to law enforcement). This was a 17% increase over the prior year, and reflects only those state/jurisdictions that maintain and report such statistics. The FBI views dealing with Hate crimes as their “highest priority” in their Civil Rights program. <https://www.fbi.gov/investigate/civil-rights/hate-crimes>

Sandy Springs is a very diverse community, and hate crimes can have a broader effect than most other kinds of crimes. As stated by the Justice Department, “a hate crime victimizes not only the immediate target but also impacts every member of the group that the direct victim represents. Hate crimes affect families, communities, and sometimes the entire nation.”

While I am not aware of any (reported) hate crimes in our City, the possibility remains that there will be. For example, there have been several documented incidences of anti-Semitic vandalism at metro-area high schools and colleges in recent years. And it is not just anti-Semitic crimes, but potential crimes against Mosques, or Churches, and LGBTQ individuals are unfortunately possible within our community.

Lastly, the proposed ordinance will not only provide another “tool in the toolbox” for our police and courts, but it also demonstrates our support for state-wide Hate-Crime legislation, which I believe is widely supported within our community.

Hate Crime Statistics: The second part of the proposed ordinance would mandate that the SSPD track and report hate crimes in our community through the GBI and FBI reporting systems. This is something that is very common nationally, but not here in Georgia.

Next Steps:

If there is consensus of Council, the proposed ordinance should receive final legal review, including section and cross-section identification, and determination of maximum available penalties. Upon completion of legal review, the ordinance should be placed on a public hearing calendar for consideration and vote of the City Council at the earliest possible time.

ⁱ House Bill 426 passed in the Georgia House with bipartisan support; the Georgia Senate did not vote on its version of HB426 in the most recent session.

**STATE OF GEORGIA
COUNTY OF FULTON**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA TO AMEND CHAPTER 38 (OFFENSES AND MISCELLANEOUS PROVISIONS) OF THE CITY'S CODE OF ORDINANCES TO PROVIDE FOR ENHANCED PENALTIES FOR CERTAIN CODE VIOLATIONS EVIDENCING ; BY PROVIDING FOR THE COLLECTION AND DISSEMINATION OF INVESTAGATORY DATA BY AND FOR LAW ENFORCEMENT AGENCIES; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS Section 2.11 of the Charter for the City of Sandy Springs states that the Sandy Springs City Council shall have the authority to “adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of Sandy Springs...”; and

WHEREAS hate or bias-motivated crimes terrorize individual victims and their families, institutions and businesses; and

WHEREAS, hate or bias-motivated crimes can have far reaching effects on large segments of the communities in which they take place; and

WHEREAS hate or bias-motivated crimes are more than acts of violence and destruction, they are attacks on the very values which are pillars of the City of Sandy Springs; and

WHEREAS, laws against hate or bias-motivated crimes do not criminalize “hate speech”, but rather such laws increase the punishment for criminal acts where it has also been alleged and proven beyond a reasonable doubt. that the victims were selected or targeted because of their actual or perceived identity; and

WHEREAS, effective response to hate or bias-motivated incidents and crimes not only brings justice to victims and their communities, but it also strengthens the relationship between law enforcement and the communities they serve; and

WHEREAS the City of Sandy Springs is inclusive of all, irrespective of (and without limitation of) race, color, religion, national origin, sexual orientation, gender, gender identity, or physical or mental disability; and

WHEREAS the Mayor and City Council of Sandy Springs hold that the diversity that exists within our community should be embraced, and that the City is more vibrant and stronger because of the diversity of our citizens; and

WHEREAS the Mayor and the City Council reject hate in all its forms and the damage to our City that comes as a result of expressions of hate; and

WHEREAS, the importance and utility of collection of accurate data about hate or bias-motivated crimes is widely recognized by law enforcement agencies.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Sandy Springs, Georgia that the City's Code of Ordinances is amended as follows:

SECTION I: Article I of Chapter 38 relating to Offenses and Miscellaneous Provisions is hereby amended by adding Section 38-4 to provide for enhanced penalties for hate crimes and for other purposes, and will read as follows:

Sec. 38-4. – Enhanced Penalties for Hate Crimes

(a). Enhanced Penalties:

1. At any time after the filing of an indictment or accusation for a violation of Sandy Springs Municipal Code Sec(s). 38-23, 38-54, 38-58, 38-63, 38-168 and/or 38-186, but not later than the arraignment, the City shall notify the defendant of its intention to seek the enhanced penalty or penalties authorized by this Section. The notice shall be in writing and shall allege the specific factor or factors authorizing an enhanced sentence in the case.
2. Subject to the notice requirement provided in subsection (a)(1) above and in enhancement of the penalty imposed, if the trier of fact determines beyond a reasonable doubt that the defendant accused of violating any of the Code Sections listed in subsection (a)(1) above intentionally selected any victim or group of victims or any property as the object of the offense in whole or in part because of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, gender identity, physical or mental disability, or national origin of such victim or group of victims, the judge imposing sentence shall impose a sentence of imprisonment for a period of not less than ___ nor more than ___ months, and a fine not to exceed \$ _____. In addition or in lieu thereof, the Court may also impose community service or participation in an educational program as defined in subsection (c), below.
3. The Judge shall state when he or she imposes the sentence the amount of the increase of the sentence based on the application of subsections (a)(1) and (2) of this Code section.

(b). Fines imposed for concurrent or contemporaneous violation of more than one of the Code sections listed in subsection (a)(1) above may be assessed an enhanced penalty under this section for each violation.

(c). All fines paid and collected pursuant to this section shall be used to support educational programs. As used in this section, "educational program" means a program approved by the City that is conducted by a public or not-for-profit entity within the city limits and that provides training relating to the harm or damage to individuals or society caused by bigotry on the basis of

race, color, religion, national origin, sexual orientation, gender, gender identity, physical or mental disability.

(d). As used in this section, "gender identity" means gender-related identity, appearance, or behavior, regardless of whether such gender-related identity, appearance, or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.

SECTION II: Division 2 of Article IV of Chapter 2 relating to the Police Department is hereby amended by adding Section 2-207 to provide for the collection and transmission of hate crime data and for other purposes, and will read as follows:

Sec. 2-207. - Hate Crime Data Collection

The Sandy Springs Police Department, to the maximum extent possible, shall provide the Federal Bureau of Investigation with data concerning the commission of a crime motivated by hate, in accordance with guidelines established pursuant to the federal Hate Crime Statistics Act (as amended).

SECTION III: It is the intention of the City Council and it is hereby ordained by the authority of the City Council that the provisions of this Ordinance shall become and be made a part of The Code of the City of Sandy Springs, Georgia, and the codifier is authorized to make the specified deletions, insertions, additions, and to insert headings, article numbers and section numbers as and where appropriate.

SECTION IV: All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION V: If any section, subsection, provisions, or clause of any part of this Ordinance shall be declared invalid or unconstitutional, or, if the provisions of any part of this Ordinance as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Ordinance not so held to be invalid, or the application of this Ordinance to other circumstances not so held to be invalid. It is hereby declared as the intent of the City Council that this Ordinance would have been adopted in its current form without the invalid or unconstitutional provision contained therein.

SECTION VI: This Ordinance shall become effective immediately upon its adoption.

SO ORDAINED this 16th day of July, 2019.

CITY OF SANDY SPRINGS, GEORGIA

By: _____
Russell K. Paul, Mayor

Attest:

Coty Thigpen, City Clerk
(SEAL)