

# COUNCIL COMMUNICATION

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|--|---------------------|---|------------------------------------|----------------------|---|
| <b>Meeting Date:</b><br>July 23, 2019  | <b>Agenda Item:</b> | <b>Agenda Location:</b><br>Consent Calendar | <b>Goal(s):</b>                    | <b>Legal Review:</b> | <input type="checkbox"/> 1 <sup>st</sup> Reading<br><input checked="" type="checkbox"/> 2 <sup>nd</sup> Reading |
| <b>Subject:</b> An ordinance amending Subsection 1-8(b) of the Thornton City Code pertaining to General Penalty and maximum period of incarceration. |                     |   |                                    |                      |   |
| <b>Recommended by:</b> Luis A. Corchado  |                     |   | <b>Approved by:</b> Kevin S. Woods |                      | <b>Ordinance previously introduced by:</b><br><hr style="width: 100%;"/> <b>Montoya</b>                         |
| <b>Presenter(s):</b> Michelle Kline, Municipal Prosecutor  |                     |   |                                    |                      |   |

**SYNOPSIS:**

The Colorado General Assembly passed House Bill 19-1148, which was signed by the Governor, amending Colorado Revised Statutes (C.R.S.) §13-10-113(1)(a) relating to the imposition of jail sentences for persons convicted of a municipal ordinance violation in a municipal court, and changed the maximum jail penalty from a period not to exceed one year to a period not to exceed three hundred sixty-four days. This change was made largely in response to a concern in the legal community regarding potential collateral consequences to persons living lawfully in the United States. A person living lawfully in the United States who pleads guilty or no contest, or is found guilty of certain offenses, regardless of the facts, criminal history, or actual sentence imposed, may be subjected to removal proceedings simply because the crime in question carries a potential penalty of one year or more of incarceration.

Currently, any person who pleads guilty or no contest to, or is found guilty of any Thornton municipal offense punishable by Subsection 1-8(b), is facing up to a year in jail and/or the maximum fine allowed by C.R.S. §13-10-113 (\$2,650.00).

**RECOMMENDATION:**

Staff recommends Alternative No. 1, approval of the proposed ordinance amending Subsection 1-8(b), making the maximum potential sentence to incarceration a period not to exceed 364 days. Such an amendment has almost no effect on the Court’s discretion in sentencing and does not result in any unintended collateral consequences related to immigration and deportation/removal for persons living lawfully in the United States. The amendment ensures conformance with State Statute.

**BUDGET/STAFF IMPLICATIONS:**

None.

**ALTERNATIVES:**

1. Approve the ordinance amending Subsection 1-8(b) to change the maximum possible period of incarceration upon conviction from one year to 364 days.
2. Do not approve the ordinance.

**BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):** (includes previous City Council action)

The Thornton Municipal Court is a court of record. Currently, pursuant to C.R.S. §13-10-113, “Any person convicted of violating a municipal ordinance in a municipal court of record may be incarcerated for a period not to exceed one year or fined an amount not to exceed two thousand six hundred fifty dollars, or both.” Effective August 2, 2019, the period of incarceration will change from a period not to exceed one year to a period not to exceed three hundred sixty-four days.

Subsection 1-8(b) of the Thornton City Code authorizes a sentence that includes up to a year in jail for certain adult criminal violations and criminal traffic violations. There are approximately 100 jailable offenses in the Thornton City Code, ranging from Careless Driving to Assault. In 2018, there were 1,478 adult criminal cases filed in the Municipal Court, and in excess of 1,500 criminal traffic cases, all of which were potentially subject to a sentence of up to one year in jail. The Court did not impose any jail sentences of one year in that period.

From the data available, the Court has determined that there have been no one year jail sentences imposed in the last four years. Reducing the maximum penalty that can be imposed by one day will not impair the Court’s ability to fairly and appropriately sentence defendants.

INTRODUCED BY: Montoya

AN ORDINANCE AMENDING SUBSECTION 1-8(b) OF THE THORNTON CITY CODE PERTAINING TO GENERAL PENALTY AND MAXIMUM PERIOD OF INCARCERATION.

WHEREAS, Section 1-8 of the Thornton City Code (Code) establishes penalties to be imposed for a violation of any municipal ordinance; and

WHEREAS, the current maximum penalty that the Code authorizes for certain offenses is incarceration for a period not to exceed a year or a fine in the amount not to exceed the maximum amount authorized by State Law for municipal courts, or both such fine and imprisonment; and

WHEREAS, conviction of certain municipal offenses, regardless of the actual sentence imposed, if said municipal offenses carry a potential penalty of a year or more, may trigger unintended collateral consequences related to immigration and deportation/removal for persons living lawfully in the United States; and

WHEREAS, the Colorado General Assembly passed House Bill 19-1148, which was signed by the Governor, amending Colorado Revised Statutes Section 13-10-113(1)(a) relating to the imposition of jail sentences for persons convicted of a municipal ordinance violation in a municipal court, and changed the maximum jail penalty from a period not to exceed one year to a period not to exceed three hundred sixty-four days; and

WHEREAS, it is necessary to amend Subsection 1-8(b) of the Code to correspond to State Law and to eliminate unintended collateral immigration consequences unrelated to any penalty imposed in the Thornton Municipal Court upon conviction of a municipal ordinance violation; and

WHEREAS, this amendment will promote judicial economy and not negatively affect the public safety and welfare.

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

1. Subsection 1-8(b) of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken to read as follows:

**Sec. 1-8. General penalty; continuing violations.**

(b) Any person who pleads guilty or no contest to or who, after trial, is found guilty of violating any municipal ordinance which is subject to this subsection shall be

incarcerated for a period not to exceed ~~a year~~ 364 days or fined in an amount not to exceed the maximum amount authorized by state law for municipal courts, or both such fine and imprisonment, except as may be otherwise imposed within the context of a specific section, subsection, ordinance or applicable City Charter provision.

2. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
3. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.
4. The repeal or amendment of any provision of the Code 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, and 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 the 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.
5. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on July 9, 2019.

PASSED AND ADOPTED on second and final reading on \_\_\_\_\_, 2019.

CITY OF THORNTON, COLORADO

\_\_\_\_\_  
Heidi K. Williams, Mayor

ATTEST:

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Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

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Luis A. Corchado, City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on July 10, 2019, and after second and final reading on \_\_\_\_\_, 2019.