

# COUNCIL COMMUNICATION

<b>Meeting Date:</b> August 13, 2019	<b>Agenda Item:</b>	<b>Agenda Location:</b> Related Action Item	<b>Goal(s):</b>	<b>Legal Review:</b>	<input checked="" type="checkbox"/> 1 <sup>st</sup> Reading <input type="checkbox"/> 2 <sup>nd</sup> Reading
<b>Subject:</b> An ordinance amending Section 38-386 of the Thornton City Code to define “major surface distress” and “dangerous major surface distress” and amending Section 38-393 of the Thornton City Code to declare dangerous major surface distress to be a nuisance.					
<b>Recommended by:</b> Jeff Coder			<b>Approved by:</b> Kevin S. Woods		<b>Ordinance previously introduced by:</b>  _____
<b>Presenter(s):</b> Robin Brown, Senior City Development Analyst					

**SYNOPSIS:**

This ordinance creates a new nuisance provision in Article X of Chapter 38 of the Thornton City Code (City Code) to address situations where dangerous major surface distress exists in or on off-street parking or a private street, private access, private drive, access drive, or other vehicle access easement. The ordinance also defines “major surface distress,” and includes evaluative parameters for determining if the distress is significant enough to be considered “dangerous major surface distress.”

A related Public Hearing on the agenda includes proposed amendments that would clarify maintenance requirements for the same parking areas, drives, and other accesses, as well as incorporate “dangerous major surface distress” as a blighting factor, thus creating an option for the City to correct (abate) the situation and recover associated costs.

**RECOMMENDATION:**

Staff recommends Alternative No. 1, approve the City Code amendments as drafted. This option would declare dangerous major surface distress to be a nuisance and define related terms.

**BUDGET/STAFF IMPLICATIONS:**

No additional costs beyond those identified in the related Public Hearing document.

**ALTERNATIVES:**

1. Approve the City Code amendments as drafted to declare dangerous major surface distress to be a nuisance and define related terms.
2. Amend the proposed amendments in a manner directed by Council.
3. Do not approve the amendments.

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

At the July 2, 2019 Planning Session, City Council discussed this item and directed staff to bring forward the City Code Amendments.

City staff recently addressed a situation where potholes in an access drive had created a dangerous driving situation. Because the property owner was unresponsive, the City repaired the damage and subsequently recovered costs from the property owner via the Municipal Court process.

This situation illuminated the need for clearer parking area/drive maintenance expectations, and for a process by which the City could, in a timely manner, correct a dangerous situation and recover the associated costs.

INTRODUCED BY:     Sandgren    

AN ORDINANCE AMENDING SECTION 38-386 OF THE THORNTON CITY CODE TO DEFINE “MAJOR SURFACE DISTRESS” AND “DANGEROUS MAJOR SURFACE DISTRESS” AND AMENDING SECTION 38-393 OF THE THORNTON CITY CODE TO DECLARE DANGEROUS MAJOR SURFACE DISTRESS TO BE A NUISANCE.

WHEREAS, the City currently regulates nuisances in Chapter 38 Article X of the Thornton City Code (Code); and

WHEREAS, off-street parking areas, private streets, private accesses, private drives, access drives, and other vehicle access easements are utilized to access facilities and areas generally open to the public; and

WHEREAS, the City desires to address situations where dangerous major surface distress exists in or on off-street parking or a private street, private access, private drive, access drive, or other vehicle access easement; and

WHEREAS, amendments to the Code are required to declare dangerous major surface distress to be a nuisance and define related terms; and

WHEREAS, the City Council finds these Code amendments are necessary to promote the public health, safety, and welfare.

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

1. Section 38-386 of the Thornton City Code is hereby amended by the addition of the words double-underlined to read as follows:

**Sec. 38-386. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Dangerous major surface distress means major surface distress that, under the totality of the circumstances, creates a reasonable likelihood of significant vehicle or bicycle damage, or of bodily injury, as defined in Section 38-1, that would require medical attention, based on the following factors:*

- (1) The number, depth, and width of the pothole(s) or distressed area(s);
- (2) The proximity of the pothole(s) or distressed area(s) to primary travel routes for bicycles and vehicles or to primary pedestrian pathways;
- (3) The typical number of vehicles, bicycles, or pedestrians traversing the distressed area(s) on any given day;

- (4) The required divergence of vehicles or bicycles into another traffic lane due to the location of the pothole(s) or area(s) of major surface distress;
- (5) The required divergence of pedestrians from a safe and reasonable walking path due to the location of the pothole(s) or area(s) of major surface distress;
- (6) The lack of availability of reasonable alternative routes to avoid traversing the pothole(s) or area(s) of major surface distress;
- (7) Restricted or prohibited access by emergency services due to the location or magnitude of the pothole(s) or area(s) of major surface distress; and
- (8) Any other similar factor relevant to the specific situation.

Major surface distress means the presence of potholes, raveling, heaving, alligator cracks, upheaval, grade depressions, or other similar distress in a number and/or area large enough to create a reasonable likelihood of vehicle or bicycle damage or of bodily injury, as defined in Section 38-1.

- 2. Subsection 38-393(11) of the Thornton City Code is hereby enacted to read as follows:

**Sec. 38-393. - Nuisances enumerated.**

The following nuisances are unlawful and are a violation of this article:

- (11) Dangerous major surface distress located in or on off-street parking or a private street, private access, private drive, access drive, or other vehicle access easement in violation of the maintenance requirements in Chapter 18.
- 3. 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.
  - 4. 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.
  - 5. 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.

6. 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 \_\_\_\_\_, 2019.

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

CITY OF THORNTON, COLORADO

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

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

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

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
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 \_\_\_\_\_, 2019, and after second and final reading on \_\_\_\_\_, 2019.