

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2017

COUNCIL BILL NO. 17-_____.
COMMITTEE OF REFERENCE:

4 Safety, Housing, Education & Homelessness

5 **A BILL**

6 **For an ordinance amending the sentencing structure for violations of the Denver**
7 **Revised Municipal Code, modifying the general penalty, and creating a tiered**
8 **penalty system for different levels of class 1 and class 2 violations.**

9
10 **WHEREAS**, the sentencing structure for violations of the Denver Revised Municipal Code
11 (DRMC) has remained unchanged since 1993; and

12 **WHEREAS**, the DRMC sentencing structure has historically provided the same possible
13 maximum jail sentence for most violations without regard for the nature of the violation; and

14 **WHEREAS**, most municipal code violations currently carry a maximum possible sentence of a
15 \$999.00 fine and/or one year in jail; and

16 **WHEREAS**, notwithstanding this longstanding structure, the nature of municipal offenses has
17 changed over the years, so that some cases involve more significant injury or wrongdoing while other
18 “quality of life” violations disproportionately impact vulnerable populations; and

19 **WHEREAS**, a tiered system will promote greater proportionality in sentencing by providing for
20 appropriate accountability for offenses that present an unacceptable risk of harm to the community
21 while recognizing that some violations demand a lesser possible sentence; and

22 **WHEREAS**, this bill is intended to reform the sentencing structure within the DRMC to recognize
23 the different levels of severity of municipal offenses.

24 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
25 **DENVER:**

26 **Section 1.** Section 1-13 of the Denver Revised Municipal Code shall be amended by adding
27 the language underlined and deleting the language stricken to read as follows:

28 **Sec. 1-13. - General penalty.**

29 (a) Criminal violations. Except as provided in subsections (b) through (d) of this section, whenever
30 any section of this Code or any section of a rule or regulation promulgated hereunder requires,
31 prohibits or declares to be unlawful the doing of any act, any violation of such section is hereby
32 declared to be a criminal violation.

33 (b) General penalty. If no definite fine or penalty is provided for a violation, and except as otherwise
34 provided in section 1-14, any person who shall be convicted of a violation of any such section
35 shall, for each offense, be fined in a sum not more than nine hundred ninety-nine dollars

1 (\$999.00) or ~~imprisoned-jailed~~ not to exceed three hundred days one (1) year, or both so fined
2 and ~~imprisoned-jailed~~. Nothing in this section shall be construed to limit the length of probation
3 provided in section 14-61 of this Code.

4 (c) Separate violations. Unless distinct and separate violations can be otherwise established,

5 ~~E~~each day an offense and violation continues shall constitute a separate offense and violation.

6 ~~(bd)~~ Minors. Any minor over the age of ten (10) years who shall be found to have violated any
7 provision of chapter 34, chapter 38, or section 8-131 of this Code shall be subject to the
8 provisions of article II of chapter 34 of this Code.

9 ~~(ce)~~ Non-criminal violations. Whenever any section of this Code or any section of a rule or regulation
10 promulgated hereunder requires, prohibits or declares to be unlawful the doing of any act, and
11 such violation is declared to be a noncriminal violation upon an admission or finding or judgment
12 of guilt or liability by default or otherwise, the violator shall be subject to such penalty as provided
13 in the chapter or section which defines such infraction. A penalty assessment notice procedure
14 may be established to resolve the allegation of such infraction in addition to any other resolution
15 procedure authorized in this Code.

16 ~~(df)~~ Licenses or privileges. The suspension or revocation of any license, certificate or other privilege
17 conferred by the city shall not be regarded as a penalty for the purposes of this Code but shall
18 be in addition to the penalty provided in subsections (a) through ~~(ee)~~.

19 ~~(eg)~~ Cumulative remedies. The civil, criminal, and administrative actions, fines, sentences,
20 penalties, judgments, and remedies provided by this Code are intended to be cumulative in
21 nature unless specifically indicated otherwise. The city may pursue one (1) or more of these
22 civil, criminal, and administrative actions, fines, sentences, penalties, judgments, and remedies
23 and may do so simultaneously or in succession.

24 **Section 2.** Section 1-14 of the Denver Revised Municipal Code shall be amended by adding
25 the language underlined to read as follows:

26 **Sec. 1-14. Offenses classified.**

27 (a) Class 1 Offenses.

28 (1) Certain offenses present an increased risk of harm to the community and therefore, in the
29 interest of public safety, any person convicted of a class 1 offense shall, for each offense, be
30 fined in a sum not more than nine hundred ninety-nine dollars (\$999.00) or jailed not to exceed
31 one (1) year, or both so fined and jailed.

32 (2) Class 1 offenses, if specially alleged and proved as provided in section 14-71, shall include
33 the following:

- 1 a. Bias-motivated offenses, as defined in section 14-71(a)(2).
- 2 b. Sexually-motivated offenses, as defined in section 14-71-(a)(9).
- 3 c. Offenses against at-risk persons, as defined in section 14-71(a)(1).
- 4 d. Assault on a law enforcement officer, as defined in section 14-71(a)(5).
- 5 e. Assault with serious bodily harm, as defined in section 14-71(a)(7).
- 6 f. Assault with strangulation, as defined in section 14-71(a)(10).
- 7 g. Habitual domestic violence offender, as set forth in section 14-68(b)(2).

8 (b) Class 2 Offenses.

9 (1) Any person convicted of a class 2 offense shall, for each offense, be jailed not to exceed
10 sixty (60) days. Nothing in this section shall be construed to limit other sentencing options that
11 are otherwise available to the court, except that no person convicted of a class 2 offense shall
12 be subject to any fine.

13 (2) Class 2 offenses shall include the following:

- 14 a. Sec. 38-86.1. Sitting or lying in the public right-of-way.
- 15 b. Sec. 38-86.2. Unauthorized camping on public or private property prohibited.
- 16 c. Sec. 38-99. Urinating or defecating in public.
- 17 d. Sec. 38-132. Panhandling.
- 18 e. Sec. 39-3. Curfews and closures.
- 19 f. Sec. 49-254. Storage and loading.
- 20 g. Sec. 49-532. Prohibitions
- 21 h. Sec. 54-548. Solicitation on or near street or highway.

22 **Section 3.** Section 14-68 of the Denver Revised Municipal Code shall be amended by
23 adding the language underlined to read as follows:

24 **Sec. 14-68. – Domestic violence; sentencing.**

25 (b) *Domestic violence; sentencing.*

26 (1) *Domestic violence probation, treatment.* If the court places any person on probation who
27 is convicted of any crime, the underlying factual basis of which has been found by the court
28 on the record to include an act of domestic violence, the person shall be ordered, as a
29 condition of probation, to complete a treatment evaluation and treatment program that has
30 been approved by the state domestic violence offender management board or other similar
31 board created by statutes of the state. Nothing in this section shall preclude the court from
32 ordering such treatment in any appropriate case.

1 (2) Habitual domestic violence offender. Any municipal violation that includes an act of
2 domestic violence is a class 1 offense if the defendant at the time of sentencing has been
3 previously convicted of two or more prior offenses that included an act of domestic violence
4 and that were separately brought and tried and arising out of separate criminal episodes.

5 a. The prior convictions must be set forth in a special allegation filed by the prosecuting
6 attorney. For the purposes of this section, “conviction” includes any federal, state, or municipal
7 conviction for a felony, misdemeanor, or municipal ordinance violation.

8 b. For trials in cases alleging that the defendant is a habitual domestic violence offender
9 pursuant to this subsection (2), the trier of fact shall determine whether an offense charged
10 includes an act of domestic violence.

11 c. Following a conviction for an offense which underlying factual basis includes an act of
12 domestic violence:

13 1. If any prior conviction included a determination by a jury or was admitted by the
14 defendant that the offense included an act of domestic violence, the court shall proceed to
15 sentencing without further findings as to that prior conviction by the jury or by the court, if no jury
16 trial was had;

17 2. For any prior conviction in which the factual basis was found by the court to
18 include an act of domestic violence, but did not include a finding of domestic violence by a jury
19 or that was not admitted by the defendant, the trial court shall proceed to a sentencing stage of
20 the proceedings. The prosecution shall present evidence to the trier of fact that the prior
21 conviction included an act of domestic violence. The prosecution has the burden of proof
22 beyond a reasonable doubt.

23 3. At the sentencing stage, the following applies:

24 i. A finding of domestic violence made by a court at the time of the prior
25 conviction constitutes prima facie evidence that the crime involved domestic violence;

26 ii. Evidence of the prior conviction is admissible through the use of certified
27 documents under seal, or the court may take judicial notice of a prior conviction;

28 iii. Evidence admitted at the guilt stage of the trial, including testimony of the
29 defendant and other acts admitted at trial, may be considered by the finder of fact.

30 d. Any person convicted as an habitual domestic violence offender under this subsection
31 (2) for a third or subsequent domestic violence offense shall, for each offense, be sentenced in
32 accordance with the provisions of section 1-14 of this Code.

33 **Section 4.** Section 14-71 of the Denver Revised Municipal Code shall be amended by

1 adding the language underlined to read as follows:

2 **Sec. 14-71. Class 1 Offenses.**

3 (a) Definitions. For purposes of this section:

4 (1) "At-risk person" has the meaning set forth in Colorado Revised Statutes, § 18-6.5-102, as
5 amended.

6 (2) "Bias-motivated offense" or "bias motivation" means any offense committed against another
7 person in substantial part because of that person's actual or perceived race, color, religion,
8 ancestry, national origin, age, physical or mental disability, gender, sexual orientation, or gender
9 identity.

10 (3) "Class one circumstance" means bias-motivation, sexual motivation, at-risk person, assault
11 on a law enforcement officer, assault with serious bodily harm, or assault with strangulation.

12 (4) "Class one offense" means those crimes specified in section 1-14(a) of this chapter, and
13 includes bias-motivated offenses, sexually-motivated offenses, offenses against at-risk
14 persons, assault on a law enforcement officer, assault with serious bodily harm, or assault with
15 strangulation.

16 (5) "Law enforcement officer" means any police officer, any deputy sheriff, any member of the
17 police department or sheriff department, or any person duly empowered with police authority
18 who is discharging or apparently discharging their duties, whether in an on-duty or off-duty
19 capacity.

20 (6) "Physical or mental disability" has the meaning set forth in Colorado Revised Statutes § 18-
21 9-121(5), as amended.

22 (7) "Serious bodily harm" means physical damage to a person's body for which medical attention
23 was provided, including cuts, burns, disfigurement, concussion, loss of consciousness, or any
24 impairment of physical condition.

25 (8) "Sexual orientation" has the meaning set forth in Colorado Revised Statutes § 18-9-121(5).

26 (9) "Sexually-motivated offense" or "sexual motivation" means any offense committed for the
27 purpose, in whole or substantial part, of his or her own direct sexual gratification, but does not
28 include violations of section 38-158 of this Code.

29 (10) "Strangulation" means to knowingly obstruct the breathing or blood circulation of another
30 person by applying pressure on the person's throat or neck or by blocking the person's nose or
31 mouth.

32 (b) Special allegation. To establish a class 1 offense, the prosecuting attorney may file a special
33 allegation of class one circumstances in any case if sufficient admissible evidence exists that

1 would justify such a finding by a reasonable and objective finder of fact.

2 (c) Procedure.

3 (1) If the prosecuting attorney files a special allegation of class one circumstances, the class
4 one circumstance must be proved beyond a reasonable doubt.

5 a. Unless the defendant has a trial by jury, the court shall make a finding of fact, to be made
6 part of the record upon conviction, of whether the class one circumstance was present at the
7 time of the commission of the offense.

8 b. If the defendant has a trial by jury and if the jury finds the defendant guilty, the jury shall
9 also find a special verdict as to whether the class one circumstance was present at the time of the
10 commission of the offense.

11 (2) If there is a finding that a class one circumstance was present at the time of the
12 commission of the offense, such finding shall be made part of the record of conviction.

13 (3) Any person convicted of a class one offense shall, for each offense, be sentenced in
14 accordance with the provisions of section 1-14(a) of this Code.

15 **Section 5.** Section 38-99 of the Denver Revised Municipal Code shall be amended by
16 adding the language underlined to read as follows:

17 **Sec. 38-99. - Urinating or defecating in public.**

18 It shall be unlawful for any person to urinate or defecate in any public way or place which is public
19 in nature or any place open to the public view.

20 **Section 6.** The amendments set forth in this bill shall apply to offenses committed on or after
21 June 1, 2017.

23 COMMITTEE APPROVAL DATE:

24 MAYOR-COUNCIL DATE:

25 PASSED BY THE COUNCIL: _____, 2017

26 _____ - PRESIDENT

27 APPROVED: _____ - MAYOR _____, 2017

28 ATTEST: _____ - CLERK AND RECORDER,
29 EX-OFFICIO CLERK OF THE
30 CITY AND COUNTY OF DENVER

31 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2017; _____, 2017

32 PREPARED BY: Marley Bordovsky/Nevene Hullender, Assistant City Attorneys

33 DATE: _____, 2017

34 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
35 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
36 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §

1 3.2.6 of the Charter.

2 Kristin Bronson, Denver City Attorney

3 BY: _____, Assistant City Attorney DATE: _____, 2017

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