BY AUTHORITY

ORDINANCE NO._____ COUNCIL BILL NO. 17-0513

SERIES OF 2017 COMMITTEE OF REFERENCE:

Safety, Housing, Education & Homelessness

A BILL

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

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

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

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

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

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

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

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

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

Sec. 1-13. - General penalty.

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

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

($999.00) or ~~imprisoned~~ jailed not to exceed three hundred days ~~one (1) year~~, or both so fined and ~~imprisoned~~ jailed.

(1) Nothing in this section shall be construed to limit sentencing options that are otherwise available to the court.

(2) Nothing in this section shall be construed to limit the length of probation provided in section 14-61 of this Code.

(c) *Separate violations.* Unless distinct and separate violations can be otherwise established, ~~E~~each day an offense and violation continues shall constitute a separate offense and violation.

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

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

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

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

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

Sec. 1-14. Offenses classified.

(a) *Class 1 Offenses.*

(1) Certain offenses present an increased risk of harm to the community and therefore, in the interest of public safety, any person convicted of a class 1 offense may, for each offense, be fined in a sum not more than nine hundred ninety-nine dollars ($999.00) or jailed not to exceed

one (1) year, or both so fined and jailed.

(2) Class 1 offenses shall include the following:

a. Bias-motivated offenses, as defined in section 14-71(a)(2).

b. Sexually-motivated offenses, as defined in section 14-71-(a)(9).

c. Offenses against at-risk persons, as defined in section 14-71(a)(1).

d. Assault on a law enforcement officer, as defined in section 14-71(a)(5).

e. Assault with serious bodily harm, as defined in section 14-71(a)(7).

f. Assault with strangulation, as defined in section 14-71(a)(10).

g. Habitual domestic violence offender, as set forth in section 14-68(b)(2).

(b) *Class 2 Offenses.*

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

(2) Class 2 offenses shall include the following:

a. Sec. 38-86.1. Sitting or lying in the public right-of-way.

b. Sec. 38-86.2. Unauthorized camping on public or private property prohibited.

c. Sec. 38-99. Urinating or defecating in public.

d. Sec. 38-132. Panhandling.

e. Sec. 39-3. Curfews and closures.

f. Sec. 49-254. Storage and loading.

g. Sec. 49-532. Prohibitions

h. Sec. 54-548. Solicitation on or near street or highway.

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

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

(b) *Domestic violence; sentencing.*

(1) *Domestic violence probation, treatment.* If the court places any person on probation who is convicted of any crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, the person shall be ordered, as a condition of probation, to complete a treatment evaluation and treatment program that has been approved by the state domestic violence offender management board or other similar

board created by statutes of the state. Nothing in this section shall preclude the court from ordering such treatment in any appropriate case.

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

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

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

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

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

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

3. At the sentencing stage referenced in paragraph 2 of this sub-subsection c, the following applies:

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

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

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

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

Section 4. Section 14-71 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

Sec. 14-71. Class 1 Offenses.

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

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

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

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

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

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

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

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

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

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

(10) "Strangulation" means to knowingly obstruct the breathing or blood circulation of another

person by applying pressure on **the person's throat or neck or by blocking the person's nose or** mouth.

(b) *Special allegation.* To establish a class 1 offense, the prosecuting attorney may file a special allegation of class one circumstances in any case if sufficient admissible evidence exists that would justify such a finding by a reasonable and objective finder of fact.

(c) *Procedure.*

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

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

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

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

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

Section 5. Section 14-72 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

Sec. 14-72. Reporting requirements.

The city attorney's office shall provide biannual reports to the city council on the first of March covering the preceding months of September, October, November, December, and January, and on the first of October covering the preceding months of February, March, April, May, June, July, and August. These reports shall include the following information:

(1) The number of bias-motivated offenses specially alleged and convictions entered, and

(2) The sentence imposed by the court for each conviction.

Section 6. Section 38-99 of the Denver Revised Municipal Code shall be amended by adding the language underlined to read as follows:

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

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

Section 7. The amendments set forth in this bill shall apply to offenses committed on or after

June 1, 2017.

COMMITTEE APPROVAL DATE: May 3, 2017
MAYOR-COUNCIL DATE: by Consent
PASSED BY THE COUNCIL: May 22, 2017
_____ - PRESIDENT
APPROVED: _____ - MAYOR _____
ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

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

DATE: May 11, 2017

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kristin Bronson, Denver City Attorney

BY: _____, Assistant City Attorney DATE: May 11, 2017