



TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MARGARET SELL, FINANCE DIRECTOR/CITY CLERK

DATE: APRIL 5, 2022

AGENDA TEXT: ORDINANCE 2022-12 – 2nd Reading - PUBLIC HEARING - Amending Section 1.28.020 (A) of the Fruita Municipal Code concerning the maximum penalty for violations of the Fruita Municipal Code

BACKGROUND

The City Attorney presented a memorandum to the City Council regarding amendments to Colorado Revised Statutes (CRS) section 13-10-113 (1) (a) concerning the maximum penalty and imprisonment time that may be assessed for violations of municipal ordinances. These amendments result in the need to update the Fruita Municipal Code (FMC) to reduce the maximum one-year imprisonment time currently permitted to 364 days.

In addition, the City Council met in workshop (2/22/2022) to discuss a potential increase in the maximum penalty currently set forth in the FMC of \$1,000 to the \$2,650 maximum amount allowed pursuant CRS Section 13-10-113 (1) (a). Staff was directed to prepare an ordinance for consideration by the City Council at their March 1, 2022 meeting to amend the General Penalty section of the FMC to the maximum allowable limits for both imprisonment and fines.

The following is a summary of comments from Judge Robinson on when a maximum penalty might be imposed on a defendant in Fruita Municipal Court.

Judge Robinson stated that he considers the following when assessing penalties for violations of the Municipal Code:

- recommendations from the prosecutor
- input from the defendant, and
- impact on the victim

The Judge considers both mitigating and aggravating factors which can include the following:

Aggravating factors

- prior offenses or multiple offenses of the same nature – escalating consequences for multiple offenses of a similar nature
- egregious conduct such as hate crimes on specific segments of the community (sexual orientation, gender, gender identify, race, color, disability, religion, national origin, etc)
- present a potential danger to the public

- negative impacts on the overall general health and safety of the public (e.g violations of industrial pretreatment wastewater regulations, land use code violations)

Mitigating factors

- ability of defendant to pay fines and restitution to victim
- does it provide a deterrent to future violations/behavioral issues
- imposition of larger fine with suspension of all or part of the fine as an incentive to stay out of trouble or successfully complete probationary period

This Ordinance was introduced to the City Council first reading on March 1, 2022 and a notice of public hearing on the ordinance for the April 5 Council meeting was published on March 9, 2022 as directed by Council.

FISCAL IMPACT

This ordinance, while increasing the potential maximum fine for violations of the Municipal Code, is not expected to have any significant fiscal impact.

APPLICABILITY TO CITY GOALS AND OBJECTIVES

General penalties for violations of the Municipal Code are a tool to ensure compliance with the laws of the City of Fruita which provides for the health, safety and welfare of the citizens of Fruita.

OPTIONS AVAILABLE TO THE COUNCIL

- Adoption of the Ordinance amendment the General Penalty for violations of the FMC as presented or with amendments
- Take no action thus creating a conflict between the FMC and CRS regarding maximum imprisonment times

RECOMMENDATION

It is the recommendation of staff that the Council, by motion:

ADOPT ORDINANCE 2022-12 AMENDING SECTION 1.28.020 (A) OF THE FRUITA MUNICIPAL CODE CONCERNING GENERAL PENALTIES FOR VIOLATIONS OF THE FRUITA MUNICIPAL CODE