



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Attorney	Nina P. Williams - City Attorney	April 5, 2022

ITEM

Ordinance No. 2022-07, Amending Chapters 1, 2, and 13 of the Salida Municipal Code, to Increase the Maximum Allowable Penalty and to Remove the Possible Penalty of Imprisonment for Certain Offenses in Light of Recent State Legislation.

BACKGROUND

In recent legislative sessions, the General Assembly passed a series of laws with respect to the provision of counsel to indigent defendants. In broad strokes, these laws provide that indigent defendants have a right to counsel where imprisonment is a possible penalty and require local governments to fund this representation. Separately, the General Assembly raised the maximum amount a municipal court can fine from \$1,000 to \$2,650.

Previously, these legislative enactments prompted the City to undertake a comprehensive review of the Municipal Code to evaluate whether certain penalty provisions warranted revision. Specifically, the review sought to identify offenses for which imprisonment was a possible penalty and to evaluate whether such a penalty was warranted. Additionally, this review included identifying and evaluating where fines issued by the Municipal Court could be raised. Many of these changes were implemented by a previous ordinance.

However, further review revealed that there are additional instances in the Municipal Code where it is appropriate to remove the possibility of imprisonment or raise the allowable fine. As such, this Ordinance removes the possibility of imprisonment for certain offenses and raises the allowable fine to \$2,650 where appropriate.

FISCAL NOTE

There is no direct fiscal impact associated with Ordinance No. 2022-07.

STAFF RECOMMENDATION

Staff recommends approval of Ordinance No. 2022-07.

SUGGESTED MOTION

A City Council member should state, "I move to approve Ordinance No. 2022-07 on first reading, and schedule second reading and public hearing for April 19, 2022," followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 07
(Series of 2022)

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA,
COLORADO AMENDING CHAPTERS 1, 2, AND 13 OF THE SALIDA
MUNICIPAL CODE, TO INCREASE THE MAXIMUM ALLOWABLE PENALTY
AND REMOVE THE POSSIBLE PENALTY OF IMPRISONMENT FOR CERTAIN
OFFENSES IN LIGHT OF RECENT STATE LEGISLATION**

WHEREAS, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the state of Colorado;

WHEREAS, pursuant to C.R.S. § 31-15-401, the City by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety, and welfare;

WHEREAS, under such authority, the Council previously adopted ordinances related to violations and penalties, codified, among other locations, in Chapter 1, 2, and 13 of the Salida Municipal Code (“Code”);

WHEREAS, recent state legislation provided that the maximum allowable penalty for municipal offenses is two thousand six hundred fifty dollars (\$2,650.00);

WHEREAS, recent state legislation provided that municipalities are required to provide counsel for indigent defendants where imprisonment is a possible penalty;

WHEREAS, the Council finds it desirable and appropriate, and in the best interest of the general health, safety and welfare of its citizens to amend Chapters 1, 2, and 3 of the Code, as it relates to increasing the maximum allowable penalty and removing the possible penalty of imprisonment for certain offenses.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE
CITY OF SALIDA, COLORADO AS FOLLOWS:**

Section 1. The City Council incorporates the foregoing recitals as conclusions, facts, determinations, and findings by the City Council.

Section 2. Section 1-4-30 of the Code, concerning application of penalties to juveniles, is hereby amended to read as follows:

Sec. 1-4-30. - Application of penalties to juveniles.

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo contendere to, a violation of any provision of this Code, shall be punished by a fine of not more than ~~one thousand dollars (\$1,000.00)~~ **two thousand six hundred fifty dollars (\$2,650.00)**

per violation or count. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge.

Section 3. Section 2-5-120 of the Code, concerning sentencing procedures, is hereby amended to read as follows:

Sec. 2-5-120. - Sentencing procedures.

(a) Restitution. As a condition of a suspended sentence, deferred sentence agreement or sentence to probation, the Municipal Court may provide that the defendant make restitution to the victim of his or her conduct or to a member of the victim's immediate family for the actual damages which were sustained by the victim as a result of the defendant's criminal conduct. The amount of such restitution shall be based on actual, pecuniary damages sustained by the victim, the ability of the defendant to pay, and the defendant's obligation to support his or her dependents and to meet other family obligations. The Court shall fix the time and manner of performance. For the purposes of this Section, immediate family includes the victim's spouse, and the victim's parent, sibling or child who is living with the victim. If the defendant fails to pay ordered restitution, he or she shall be returned to the Municipal Court which, upon proof of failure to pay, may: (a) modify the amount of restitution; (b) extend the time of probation; **or** (c) ~~order the defendant committed to jail with work release privileges; or (d)~~ revoke probation and impose the sentence which had been suspended during the term of probation. As used in this Section, the term victim means the party immediately and directly aggrieved by a defendant who is convicted of a criminal act and who is granted probation.

Section 4. Section 2-5-130 of the Code, concerning sentencing of juveniles, is hereby amended to read as follows:

Sec. 2-5-130. - Sentencing of juveniles.

(a) The Municipal Court shall not impose jail sentences upon juveniles, ~~except for traffic violations and contempt of court. Jail sentences imposed upon juveniles shall be served in a juvenile detention facility or temporary holding facility as authorized by state statute and shall not exceed forty eight (48) hours. One (1) jail sentence may be imposed for each separate traffic violation or each separate act or omission for which the Municipal Court finds a juvenile in contempt.~~

Section 5. Section 13-2-240 of the Code, concerning violations and penalties related to water conservation, is hereby amended to read as follows:

Sec. 13-2-240. - Water conservation.

...

(g) Violations and Penalties.

...

(3) Any person found to have violated a provision of this Section shall be fined not less than twenty-five dollars (\$25.00) for a first offense, fifty dollars (\$50.00) for a second

offense, and one hundred dollars (\$100.00) for a third offense committed within a twelve (12) month period. Any person found to have committed more than three (3) previous violations, regardless as to when such violations occurred, shall be fined not less than three hundred dollars (\$300.00) **and not more than two thousand six hundred fifty dollars (\$2,650.00).**

Section 6. *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING on this ___ day of _____, 2022, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ___ day of _____, 2022, and set for second reading and public hearing on the ___ day of _____, 2022.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL, by the City Council on this ___ day of _____, 2022.

City of Salida

Mayor Dan Shore

ATTEST:

City Clerk/Deputy City Clerk