



CITY COUNCIL ACTION FORM

Originating Dept. Police	Presented by Nina P. Williams - City Attorney	Date September 21, 2021
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ITEM

Ordinance 2021-14 Amending Chapter 8 of the Municipal Code, to update procedures related to civil vehicle, traffic and parking violations

BACKGROUND

This ordinance is primarily designed to improve procedures related to the issuance and collection of fines and penalties for civil parking and traffic violations. The goal of these changes is to streamline processes for police officers, the Municipal Judge, and the Court Clerk to conserve City resources and to facilitate the collection of fines. Specifically, these revisions: (1) update procedures related to the entry of default judgement for civil parking and traffic violations; and (2) clarify when police officers are able to issue penalty assessments in lieu of a summons and complaint. Separately, this ordinance increases the allowable fines for certain violations, as required by state legislation. The specifics of these revisions are discussed below.

Provisions related to the entry of default judgement were added to both the parking and traffic sections of the Code. Previously, for parking violations, if an individual failed to pay a fine within the requisite time frame, a summons and complaint would be issued, which would require that individual to appear in court. This process would consume resources from both the Municipal Court and the Police Department. Now, instead of issuing a summons and complaint, the Municipal Judge is allowed to enter a default judgement against the non-paying individual. That default judgement will be served via mail and the payment of the fine will be handled by collections, thereby saving City resources and facilitating the payment of fines.

Additionally, this ordinance clarifies the procedures related to when an officer may issue a penalty assessment. The use of a penalty assessment saves City resources by removing the requirement for an individual to appear in Municipal Court for arraignment; rather, the individual can simply admit guilt by paying the fine specified in the penalty assessment. These revisions make clear that when an officer would otherwise be able to issue a summons and complaint, the officer may instead issue a penalty assessment if an enumerated list of



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conditions is met. Further, these revisions specify when service of the penalty assessment is complete.

STAFF RECOMMENDATION

Staff recommends approval of Ordinance 2021-14 on second reading.

SUGGESTED MOTION

A City Councilperson should make a motion to “Approve Ordinance 2021-14, amending Chapter 8 of the Salida Municipal Code, regarding vehicles and traffic, to update procedure related to civil vehicle, traffic and parkig violations, on second reading” followed by a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 14
(Series of 2021)

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA,
COLORADO AMENDING CHAPTER 8 OF THE SALIDA MUNICIPAL CODE,
REGARDING VEHICLES AND TRAFFIC, TO UPDATE PROCEDURES
RELATED TO CIVIL VEHICLE, TRAFFIC AND PARKING VIOLATIONS**

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 regulations related to vehicles and traffic, codified as Chapter 8 of the Salida Municipal Code (“Code”);

WHEREAS, procedures related to the issuance of fines and penalties for civil parking and traffic violations can be made more efficient and City resources can be saved through regular review and revision;

WHEREAS, streamlining the process for the entry of default judgement for civil parking and traffic violations will reduce the administrative responsibilities of the Municipal Court Clerk and will facilitate the collection of fines and penalties;

WHEREAS, clarifying the procedures related to the issuance of penalty assessments will similarly create efficiencies in the administration of civil parking and traffic violations; and

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 Chapter 8 of the Code, as it relates to procedures governing civil vehicle, traffic and parking violations.

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 8-1-30(a)(5) and (a)(10.5) of the Salida Municipal Code, concerning amendments to the Model Traffic Code, regarding parking and classification of traffic offenses and infractions, are hereby amended, as they relate to procedures related to default judgment, to read as follows:

Sec. 8-1-30. - Amendments.

(a) Article I of the Model Traffic Code is adopted subject to the following additions, modifications and amendments, and the amendments to said code set forth in this Section

shall take precedence over the literal print copy of the code in the event of conflict:

...

(5) Section 1203 is adopted to read as follows:

1203. Two-hour parking limit. The City Council may, by resolution, designate certain portions of the streets and alleys within the City as being areas where parking is limited to two (2) hours. In the event the City Council enacts no such resolution, the Chief of Police may make such designations. However, subsequent resolutions of the City Council making such parking designations shall take precedence over those designations made by the Chief of Police. When the designation of a two-hour parking limit is made, the areas shall be posted and the posting of signs reflecting the two-hour parking limit shall constitute prima facie evidence that the area was designated in a proper manner. It is ~~unlawful~~ **a civil parking infraction** for any person to park any vehicle in a two-hour parking area and to leave it in that same place within the two-hour parking area for over two (2) hours. When a vehicle is illegally parked for a period of time in excess of the two-hour parking limit, the fine shall be in accordance with the adopted fine schedule. **Parking infractions shall constitute civil matters. The Colorado Municipal Court Rules of Procedure shall apply to parking infraction proceedings, except that no warrant for arrest shall be issued for the defendant's failure to appear.** ~~If the fine is not paid within seven (7) days after the notice is issued, then the fine shall be increased by five dollars (\$5.00). If~~ **Instead, if the fine is not paid within fourteen (14) days after the original notice is issued, the court may enter a judgment of liability by default against the defendant and assess any penalty and costs established by law. The municipal court clerk shall give notice to the defendant of the entry of said default judgment by first class mail addressed to the registered address of the motor vehicle that is the subject of the parking infraction. The defendant may petition the municipal court to vacate the default judgment by filing a written petition with the municipal court clerk within ten (10) days of the date of the notice of entry of the default judgment. If no such petition is filed, the default judgment shall become final, except to the extent the city seeks to immobilize or impound the subject vehicle.** ~~the registered owner of the vehicle shall be issued a summons, or a summons following a complaint, charging the violation of the parking regulation for which the notice was originally issued. The summons, or summons and complaint, shall require a court appearance and the fine shall be assessed and determined by the Municipal Court Judge. In addition, court costs shall be assessed if the defendant is found guilty.~~

...

(10.5) Section 1701 is hereby deleted and replaced with the following:

1701. Traffic offenses and infractions classified—Penalties—Penalty and surcharge schedule.

(1) Except as specifically set forth in this Section 1701, it is a civil traffic infraction for any person to violate any of the provisions of this Code. Any designation or classification of a violation in any other Section of this Code is inapplicable and expressly superseded by this Section 1701. Traffic infractions shall constitute civil matters. The Colorado Municipal Court Rules of Procedure shall apply to traffic infraction proceedings, except that no warrant for arrest

shall be issued for the defendant's failure to appear when the only violation charged would constitute a noncriminal traffic infraction and the defendant's driver's license is issued by the State of Colorado or any other state which participates in the Interstate Nonresident Violator Compact, as codified at Section 24-60-2101, C.R.S. Instead, the court may enter a judgment of liability by default against the defendant ~~for failure to appear~~, assess any penalty and costs established by law, and report the judgment to the appropriate State motor vehicle department which may assess points against the defendant's driver's license and may take appropriate action to ensure that the judgment is satisfied. **The municipal court clerk shall give notice to the defendant of the entry of said default judgment by first class mail addressed to the registered address of the motor vehicle that is the subject of the traffic infraction. The defendant may petition the municipal court to vacate the default judgment by filing a written petition with the municipal court clerk within ten (10) days of the date of the notice of entry of the default judgment. If no such petition is filed, the default judgment shall become final, except to the extent the city seeks to immobilize or impound the subject vehicle.**

(2) For any violation of any provision of this Chapter or the Model Traffic Code adopted herein which is a traffic infraction, no trial by jury shall be available, no arrest warrant shall be issued for failure to appear to pay, no privilege against self-incrimination shall apply, the standard of proof shall be a preponderance of the evidence, and the conduct of all proceedings applicable to such a violation shall otherwise be in conformity with those generally applicable to civil matters.

- (3) The following violations constitute criminal traffic offenses:
- (a) A violation of Section 1101 involving driving twenty-five (25) or more miles in excess of the lawful speed limit.
 - (b) A violation of Section 1101(8)(a) involving driving twenty-five (25) miles or more in excess of the speed limit on any interstate highway.
 - (c) Violations of Sections 1105 (speed contests), 1401 (reckless driving), 1402 (careless driving), 1409 (failure to show compulsory insurance), 1413 (eluding a police officer), 1703 (aiding and abetting a traffic offense) and 1903 (failing to stop for a school bus) of the Model Traffic Code, as amended.

(4) Notwithstanding any other provision of this Code to the contrary, civil traffic infractions as provided in this Code shall be subject to the ~~following~~ maximum penalties **pursuant to Chapter 1, Article IV of this Code**, a fine of ~~one thousand dollars (\$1,000.00)~~ Court costs as authorized by State and local law shall be added to the fine.

(5) Notwithstanding any other provision of this Code to the contrary, criminal traffic offenses as provided in this Code shall be subject to the following maximum penalties: one hundred eighty (180) days imprisonment or fine of ~~one~~ **two thousand six hundred fifty** dollars (~~\$1,000~~ **2,650**.00) or both. Court costs as authorized by State and local law shall be added to any penalty imposed.

Section 3. Section 8-1-60 of the Salida Municipal Code, concerning penalty assessments, is hereby amended, as it relates to the procedure for service and payment of a penalty assessment notice, to read as follows:

Sec. 8-1-60. – Penalty assessments.

...

(c) Effect of payment and nonpayment.

- (1) By paying the penalty assessment notice, the person named therein as the violator or defendant admits his or her guilt of the charge against him or her and, upon receipt of such payment, the Court shall enter judgment against the defendant that he or she has been found guilty. **If driving a motor vehicle was involved, payment of the penalty assessment constitutes a conviction for the purposes of any penalty enhancement provisions on future offenses.**
- (2) If a person to whom a penalty assessment notice is issued fails to pay the penalty assessment specified in said notice before the time in which said person is required to appear before the Municipal Court, said person shall appear before the Municipal Court in person, or by attorney, in order to enter a plea to the charges. If said person fails to appear at the time and place specified in the notice, judgment shall be entered against said person under the terms of Section 1710 of the Model Traffic Code. If said person appears, the Municipal Court will accept said person's plea to the charges contained in the penalty assessment notice and will proceed as though the penalty assessment notice were a summons and complaint.
- (3) Nothing contained in this Section shall be deemed to prohibit the Municipal Court from collecting penalty assessments and costs by means other than those described in Part 17 of Article I of the Model Traffic Code.

(d) When a peace officer is authorized to serve a summons and complaint on any person, the officer may issue a penalty assessment notice if:

(1) The offense has been designated by the municipal judge;

(2) Only one offense has arisen out of the same episode of violation;

(3) No significant hazard to life or property was involved;

(4) The offense does not appear to be an intentional or reckless violation;
and

(5) The circumstances reasonably persuade the officer that the person is likely to comply with the terms of the penalty assessment notice.

(e) Service of a penalty assessment notice upon the recipient is complete upon signature by the person on the penalty assessment's "acknowledgement of guilt or promise to appear." At that point, the person shall either pay the specified fine at the place and

within the time specified on the notice or appear at the place and time specified on the notice to be arraigned by the municipal judge. If the person withdraws a plea of not guilty and enters a guilty plea to the judge, or, upon trial, if the person is found guilty, the fine imposed shall be that specified on the penalty assessment notice and court costs shall also be imposed.

Section 4. Section 8-3-50 of the Salida Municipal Code, concerning abandoned and inoperable vehicles, is hereby amended, as it relates to violations, to read as follows:

Sec. 8-3-50. - Violations.

- (a) Any person who violates any provisions of this Article within the City commits ~~an unlawful act and a misdemeanor~~ **a civil violation**. Any person convicted of such a violation shall be ~~guilty of a misdemeanor and~~ subject to the provisions of Chapter 1, Article IV of this Code. Further, the City shall be entitled to pursue any other civil ~~or criminal~~ remedy available at law to enforce the provisions of this Chapter.
- (b) ~~It shall be an affirmative defense to any criminal charge arising under this Article that the vehicle was abandoned without knowledge and consent of the person charged.~~

Section 5. *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 7th day of September, 2021, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ____ day of _____, 2021, and set for second reading and public hearing on the 21st day of September 2021.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL, by the City Council on this 21st day of September, 2021.

City of Salida

Mayor P.T. Wood

ATTEST:

City Clerk/Deputy City Clerk