CITY OF SALIDA, COLORADO
ORDINANCE NO. 05
(Series of 2019)

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AMENDING THE SALIDA MUNICIPAL CODE AS IT RELATES TO MUNICIPAL COURT AND VIOLATIONS WITHIN THE CODE CARRYING A POSSIBLE PENALTY OF IMPRISONMENT

WHEREAS, pursuant to C.R.S. § 31-15-401, the City of Salida, Colorado ("City"), acting 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; and

WHEREAS, pursuant to this authority, the City has previously adopted certain code provisions, general offenses and violations, and the penalties attached to them, codified in the Salida Municipal Code ("Code"); and

WHEREAS, Colorado House Bill 16-1309, "concerning a defendant's right to counsel in certain cases considered by municipal courts," recently became effective, which concluded that both the United States and Colorado constitutions provide that an accused person has the right to be represented by counsel in criminal prosecutions, and that this constitutional right is interpreted to mean that counsel will be provided at municipal court, at a local government's expense, for indigent persons in all cases in which incarceration is a possible penalty; and

WHEREAS, this recent state legislation has prompted the Council to review its Code for offenses and/or violations which contain incarceration or imprisonment as a possible penalty, and evaluate where such a penalty makes sense and where it is unnecessary; and

WHEREAS, the Council therefore finds that it is desirable and appropriate to amend the Code to remove imprisonment or incarceration as a possible penalty for certain violations and offense as set forth below; and

WHEREAS, the Council also finds it desirable and appropriate to amend the Code to clean up outdated portions as a result of the same and to ensure current compliance with State law as it relates to Municipal Court issues, violations and penalties.

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 7-1-110 of the Salida Municipal Code, concerning Violations and penalties, Administration and abatement of nuisances, is hereby amended to read as follows:

Sec. 7-1-110. - Violations and penalties.

Any person who violates, disobeys, omits, neglects, refuses to comply with or resists any of the provisions of this Chapter shall be ~~guilty of a misdemeanor, and upon conviction thereof shall be~~ 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.

Section 3. Section 7-2-10 of the Salida Municipal Code, concerning Accumulation to constitute nuisances, is hereby amended to read as follows:

Sec. 7-2-10. - Accumulation to constitute nuisances.

THE LOCATION OR EXISTENCE OF ~~Whenever there shall be in or upon any lot or piece of ground within the limits of the City any~~ damaged merchandise, litter, trash, rubbish, garbage, ~~wrecked car,~~ inoperable vehicles or other wrecked vehicles, or an accumulation ~~of junk vehicles or junk of any type~~ **THEREOF** upon any private or public property, except in areas specifically zoned in Chapter 16 of this Code for said purposes or otherwise designated by the City for such purposes, ~~the existence of any such material or items~~ shall constitute a nuisance and **THE INDIVIDUAL OR ENTITY CAUSING OR CREATING SUCH NUISANCE** shall be in violation of this Article**, AND SUBJECT TO THE PROVISIONS OF CHAPTER 1, ARTICLE IV OF THIS CODE**.

Section 4. Section 7-5-70 of the Salida Municipal Code, concerning Penalties, Animals, is hereby amended to read as follows:

Sec. 7-5-70. - Penalties.

(a) Any person who violates any provision of this Article shall be ~~deemed guilty of a misdemeanor and shall be~~ punished in accordance with the provisions set forth in Section 1-4-20 of this Code. The City Council may adopt by resolution recommended fine schedules for violations under this Section.

(b) In addition ~~to charging violations as misdemeanors as described in subsection (a)~~, the City shall have the concurrent remedy of charging any person who violates any provision of this Article with a noncriminal offense subject to imposition of a penalty assessment pursuant to the procedure set forth at Chapter 1, Article VII of this Code.

Section 5. Section 8-1-30 of the Salida Municipal Code, concerning Amendments, Model Traffic Code, is hereby amended with the addition of a new subsection (a)(10.5) 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:

(1) …

(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 C.R.S. § 24-60-2101. 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.

(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 penalty: a fine of $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 days (180) imprisonment or fine of $1,000.00 or both. Court costs as authorized by state and local law shall be added to any penalty imposed.

Section 6. Section 8-1-30(a)(8) of the Salida Municipal Code, concerning Amendments, Model Traffic Code, Compulsory insurance, is hereby amended 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:

(1) …

(8) Section 1409 is hereby deleted and replaced with the following:

1409. Compulsory insurance - penalty. (1) No owner of a motor vehicle or low-power scooter required to be registered in this state shall operate the vehicle or permit it to be operated on the public highways of this local government when the owner has failed to have a complying policy or certificate of self-insurance in full force and effect as required by Sections 10-4-619 and 10-4-716, C.R.S.

(2) No person shall operate a motor vehicle or low-power scooter on the public highways of this local government without a complying policy or certificate of self-insurance in full force and effect as required by Sections 10-4-619 and 10-4-624, C.R.S., as amended.

(3) When an accident occurs, or when requested to do so following any lawful traffic contact or during any traffic investigation by a peace officer, no owner or operator of a motor vehicle or low-power scooter shall fail to present to the requesting officer immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by Sections 10-4-619 and 10-4-624, C.R.S., as amended.

(4) Any person who violates the provisions of subsection (1), (2) or (3) of this section commits a **CRIMINAL** traffic offense ~~punishable pursuant to Section 8-1-70 of the Salida Municipal Code~~.

(5) Testimony of the failure of any owner or operator of a motor vehicle or low-power scooter to present immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by Sections 10-4-619 and 10-4-624, C.R.S., as amended, when requested to do so by a peace officer, shall constitute prima facie evidence, at a trial concerning a violation charged under subsection (1) or (2) of this section, that such owner or operator of a motor vehicle or low-power scooter violated subsection (1) or (2) of this section.

(6) No person charged with violating subsection (1), (2) or (3) of this section shall be convicted if

he produces in court a bona fide complying policy or certificate of self-insurance which was in full force and effect, as required by Sections 10-4-619 and 10-4-624, C.R.S., as amended, at the time of the alleged violation.

(7) THE COURT MAY SUSPEND UP TO ONE HALF OF THE FINE UPON A SHOWING THAT APPROPRIATE INSURANCE AS REQUIRED PURSUANT TO SECTION 10-4-619 OR 10-4-624, C.R.S., HAS BEEN OBTAINED. THE MINIMUM FINE IMPOSED SHALL BE MANDATORY, AND THE DEFENDANT SHALL BE PUNISHED BY A MINIMUM MANDATORY FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS. NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO PREVENT THE COURT FROM IMPOSING A FINE GREATER THAN THE MINIMUM MANDATORY FINE.

Section 7. Section 8-1-70 of the Salida Municipal Code, concerning Violation; penalty, Model Traffic Code, is hereby deleted in its entirety:

~~**Sec. 8-1-70. - Violation; penalty.**~~

~~It is unlawful for any person to violate any of the provisions of this Article or the Model Traffic Code as amended and adopted herein. Any person convicted of violating any such provisions 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.~~

Section 8. Section 8-2-60 of the Salida Municipal Code, concerning Restrictions on minor drivers, is hereby amended to read as follows:

Sec. 8-2-60. - Restrictions on minor drivers.

…

(e) Any person who violates any provision of this Section shall be ~~deemed to have committed a misdemeanor and an unlawful act and, upon conviction thereof, shall be~~ subject to imposition of a penalty assessment in the amount of not less than fifty dollars ($50.00). The Municipal Judge shall promulgate a schedule of penalties for all ~~misdemeanor minor~~ traffic violations contained in this Section. Such schedule shall be prominently posted in the office of the Court Clerk.

Section 9. Section 10-7-30 of the Salida Municipal Code, concerning Possession and consumption of alcohol beverage in certain places, is hereby amended to read as follows:

Sec. 10-7-30. - Possession and consumption of alcohol beverages in certain places.

(a) Possession and consumption in public restricted. It is a ~~misdemeanor~~ **VIOLATION SUBJECT TO THE PROVISIONS OF CHAPTER 1, ARTICLE IV OF THIS CODE** for any person to consume any alcohol beverage or to possess any unsealed or open container containing any alcoholic beverage in or on any of the following described places: public ways, sidewalks, streets, alleys, parks or parkways; within or upon any public portion of a building, grounds or real property operated by any governmental entity within

the City; or upon any parking lot, public or private, generally open to members of the public. For the purpose of this subsection, an unsealed or open container shall not include a container of vinous liquor that has been resealed pursuant to the provisions of Section 12-47-411(3.5), C.R.S., as amended, and is clearly recognizable to a police officer as a container that has been resealed by the hotel or restaurant license holder.

Section 10. Section 10-7-70 the Salida Municipal Code, concerning "Possession of Cannabis," is hereby amended to read as follows:

Sec. 10-7-70. - Possession of cannabis.

(a) For the purposes of this Section, the term cannabis shall include all parts of the plant Cannabis sativa L., whether growing or not; the seed thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake, or the sterilized seed of such plant, which is incapable of germination. The term cannabis concentrate means hashish, tetrahydrocannabinols or any alkaloid, salt derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols.

~~(b) It is unlawful to possess one (1) ounce or less of cannabis or cannabis concentrate, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a penalty assessment of not more than one hundred dollars ($100.00).~~

(c) It is unlawful **TO** openly and publicly ~~to~~ display or consume one (1) ounce or less of **CANNABIS OR** cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, punishment shall be as set out in Chapter 1, Article IV of this Code.

(d) The provisions of this Section shall not apply to any person who possesses or uses cannabis or cannabis concentrate pursuant to the Dangerous Drugs Therapeutic Research Act

Section 11. Section 11-5-50 of the Salida Municipal Code, concerning Violation, Trees, is hereby amended to read as follows:

Sec. 11-5-50. - Violation.

Any person who violates, disobeys, omits, neglects, refuses to comply with or resists any of the provisions of this Article shall be ~~guilty of a misdemeanor, and upon conviction thereof shall be~~ subject to the provisions of Chapter 1, Article IV of this Code. It shall be unlawful to damage or otherwise destroy any park or street tree. Upon conviction or plea of guilty, the individual will be charged the costs of repairing or replacement of said tree.

Section 12. Section 11-6-70 of the Salida Municipal Code, concerning Prohibited acts and conditions, Parks and recreation areas, is hereby amended to read as follows:

Sec. 11-6-70. - Prohibited acts and conditions.

…

(c) Any person who violates, disobeys, omits, neglects, refuses to comply with or resists any of the provisions of this Article shall be ~~guilty of a misdemeanor, and upon conviction thereof shall be~~ subject to the provisions of Chapter 1, Article IV of this Code.

Section 13. Section 16-2-100 of the Salida Municipal Code, concerning Violations and penalty, Land Use and Development, is hereby amended to read as follows:

Sec. 16-2-100. - Violations and penalty.

(a) It shall be unlawful to erect, construct, reconstruct, alter, maintain, or use any building or structure or to use any land in violation of any provision of this Chapter. Any person, either as owner, lessee, occupant, or otherwise, who violates or interferes in any manner with any person in the performance of a right or duty granted or imposed upon him or her by this Chapter shall be ~~guilty of a misdemeanor punishable as forth in~~ **SUBJECT TO THE PROVISIONS OF** Chapter 1, Article IV of this Code.

Section 14. Should any one or more sections or provisions of this Ordinance or of the Code provisions enacted hereby be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of such Code provision, the intention being that the various sections and provisions are severable.

Section 15. Any and all Ordinances or Codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such Ordinance or Code or part thereof shall not revive any other section or part of any Ordinance or Code provision heretofore repealed or superseded.

INTRODUCED ON FIRST READING, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation in the City of Salida by the City Council on the 19th day of February, 2019 and set for second reading and public hearing on the 5th day of March, 2019.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the _____day of _____, 2019.

CITY OF SALIDA

By:_____
Mayor

ATTEST: (SEAL)

_____
City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the 22nd day of February, 2019 and **BY TITLE ONLY, OR IN FULL,** after Final Adoption on the ____ day of_____, 20__.

By: _____
City Clerk