

ORDINANCE 8335

AN ORDINANCE AMENDING SECTION 5-1-1, "DEFINITIONS," AND SECTION 5-2-4, "GENERAL PENALTIES," B.R.C. 1981, TO AMEND THE DEFINITION OF BIAS MOTIVATED CRIME AND AMEND THE MAXIMUM PENALTY WHEN A CRIME IS FOUND TO BE BIAS MOTIVATED, AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, FINDS AND RECITES THE FOLLOWING:

- A. Bias-motivated conduct inflicts greater individual and societal harm and is especially harmful because it is motivated by bias or hatred toward a protected group.
- B. It has been widely documented that victims of bias-motivated crimes suffer harmful psychological effects, and these crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims and incite community unrest.
- C. In light of the greater degree of harm suffered by minority groups that have been systematically victimized, these groups deserve special protection from the municipal code, even where the offender merely perceives that the victim was a member of that group.
- D. Because an offender chooses a victim by reason of bigoted beliefs or hatred, bias-motivated offenses warrant greater maximum penalties.
- E. Council desires to redress these individual and societal harms by enhancing the sentences for criminal conduct on account of the offender's motives of bias or hatred toward a protected group.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 5-1-1, "Definitions," B.R.C. 1981, is amended to read as follows:

5-1-1. - Definitions.

The following terms used in this title have the following meanings unless the context clearly indicates otherwise:

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Bias motivated crime shall mean the commission of any of the underlying offenses specified below if the offense is committed by reason of the actual or perceived race, color, religion, religious expression, national origin, age, disability, sex, sexual orientation, gender, gender identity or gender ~~variance~~ expression of another individual or group of individuals, regardless of the existence of any other motivating factor or factors. The underlying offenses are sections 5-3-1, "Assault in the Third Degree," 5-3-2, "Brawling," 5-3-3, "Physical Harassment," 5-3-4, "Threatening Bodily Injury," 5-3-6, "Use of Fighting Words," 5-3-9, "Brandishing a Weapon," ~~or 5-4-1, "Damaging Property of Another,"~~ 5-4-14, "Graffiti Prohibited," 5-4-15, "Posting Signs on Property of Another Prohibited," 5-8-6, "Aiming Weapon at Another," or 5-8-7, "Flourishing Deadly Weapon in Alarming Manner," B.R.C. 1981. No "bias motivated crime" finding shall occur unless the allegation of bias motivation has been specifically charged and sustained by an in-court admission of a defendant, or by a specific finding established beyond a reasonable doubt by a judge or jury in a contested trial.

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Gender identity and *gender-variance expression* shall have the meanings defined in section 12-1-1, "Definitions," B.R.C. 1981.

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Religious expression shall have the meaning defined in Section 12-1-1, "Definitions," B.R.C. 1981.

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Section 2. Section 5-2-4, "General Penalties," B.R.C. 1981, is amended to read as follows:

5-2-4. - General Penalties.

(a) The penalty for violation of any provision of this code or any ordinance is a fine of not more than \$1,000 per violation, or incarceration for not more than ninety days in jail or by both such fine and incarceration, except as follows:

- (1) Where any different provision is made elsewhere in this code or any ordinance;
- (2) Where the defendant's criminal culpability is vicarious, jail may not be imposed as a penalty;
- (3) Where a non-traffic violation is involved, in order to impose a jail sentence, the court must be satisfied from the evidence and other material available to it for sentencing that

1 the defendant acted intentionally, knowingly or recklessly with respect to the material
2 elements of the violation. Where traffic offenses are concerned, ordinary negligence is
sufficient to permit the imposition of jail;

3 (4) Where a defendant is a child under the age of ten years, in which case the child may not
be held accountable in municipal court for any violation; or

4 (5) Where the defendant is a child of ten years through and including seventeen years of age,
5 the child may not be sentenced to jail except upon conviction of a moving traffic violation
6 for which penalty points are assessed against the driving privilege under the laws of this
state.

(b) Nothing in Subsection (a) of this section is intended to:

7 (1) Remove or limit the discretion or authority of any public official to charge a child in a
8 court other than the municipal court; or

9 (2) Limit the power of the municipal court to incarcerate a defendant for nonpayment of a
fine or for contempt.

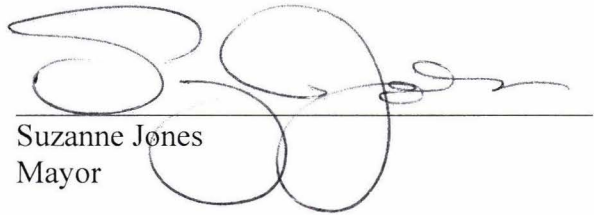
10 (c) The penalty for violation of any rule or regulations promulgated under authority delegated by
11 the charter, this code, or any ordinance of the city is a fine of not more than \$1,000 per
violation, except as provided in Paragraph (a)(4) of this section and in Section 5-5-20,
"Unlawful Conduct on Public Property," B.R.C. 1981.

12 (d) The maximum penalty for violation of Sections 5-3-1, "Assault in the Third Degree," 5-3-2,
13 "Brawling," 5-3-3, "Physical Harassment," 5-3-4, "Threatening Bodily Injury," 5-3-6, "Use
14 of Fighting Words," 5-3-9, "Brandishing a Weapon," and 5-4-1, "Damaging Property of
Another," 5-4-14, "Graffiti Prohibited," 5-4-15, "Posting Signs on Property of Another
15 Prohibited," 5-8-6, "Aiming Weapon at Another," and 5-8-7, "Flourishing Deadly Weapon
16 in Alarming Manner," B.R.C. 1981, when the offense is found to be a bias motivated crime,
shall be a fine of not more than \$2,000 per violation, or incarceration for not more than ~~ninety~~
17 days three hundred sixty four days in jail, or both such fine and incarceration. The court shall
not be required to make the findings required by Paragraph (a)(3) of this section in order to
18 impose a sentence including incarceration. This ordinance shall not be applied in a manner
that suppresses abstract thought or protected speech.


19 Section 3. This ordinance is necessary to protect the public health, safety, and welfare of
the residents of the city, and covers matters of local concern.

20 Section 4. The city council deems it appropriate that this ordinance be published by title
21 only and orders that copies of this ordinance be made available in the office of the city clerk for
22 public inspection and acquisition.
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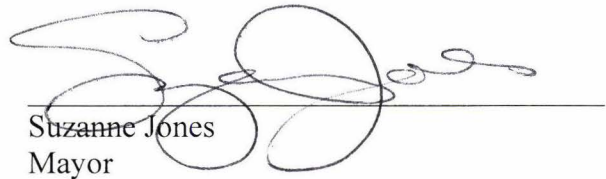
1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 6th day of August 2019.

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Suzanne Jones
Mayor


Attest:

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Lynnette Beck
City Clerk

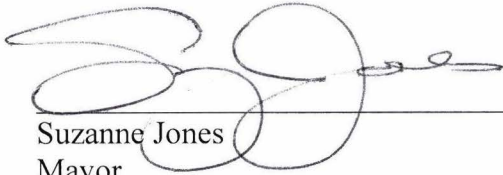
READ ON SECOND READING, AMENDED AND PASSED this 27th day of August
2019.


Suzanne Jones
Mayor


Attest:


Lynnette Beck
City Clerk

1 READ ON THIRD READING, PASSED AND ADOPTED this 17th day of September
2 2019.

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Suzanne Jones
Mayor

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Lynette Beck
9 City Clerk