

ORDINANCE NO. 2355

INTRODUCED BY: _____

AN ORDINANCE AMENDING SECTIONS 1-3003 AND 3-2103 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO ESTABLISH A MINIMUM \$500 PENALTY FOR LITTERING AND IMPROPER DUMPING

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. This ordinance is declared to be an emergency ordinance and is found to be immediately necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. Amendments.

- a. Section 1-3003 of the Commerce City Revised Municipal Code is amended to establish a new subsection (f) ("Penalty for littering and improper dumping) as set forth in Exhibit A to this ordinance.
- b. Section 3-2103 of the Commerce City Revised Municipal Code is amended to establish a minimum civil infraction penalty as set forth in Exhibit B to this ordinance.

SECTION 3. Repealer. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency.

SECTION 4. Effective Date. This ordinance shall be effective as provided in the City Charter.

INTRODUCED AND PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 18TH DAY OF OCTOBER 2021.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS _____ DAY OF _____ 2021.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

EXHIBIT A TO ORDINANCE 2355_____

Red strikethrough text shows deletions; blue italicized text shows additions.

BEGIN EXHIBIT A

Sec. 1-3003. - Penalties in general.

- (a) Misdemeanors. Except as specified below, any person who violates, disobeys, omits, neglects, refuses or fails to comply with or resists the enforcement of any provision of this Code, the Charter, or any provision of any code or other regulation adopted by reference shall be guilty of a misdemeanor and, upon conviction, shall be punished by the penalty specifically provided for such violation or, if none, then by a fine not to exceed the maximum fine permitted pursuant to C.R.S. § 13-10-113, as may be amended from time to time, or imprisonment for a term not to exceed three hundred and sixty-four (364) days, or by both such fine and imprisonment, in addition to any costs which may be assessed. Notwithstanding the foregoing, no person under the age of eighteen (18) years as of the date of the offense shall be subject to imprisonment.
- (b) Traffic violations. The violation of any of the following sections of the Commerce City Traffic Code shall constitute a misdemeanor and shall be punishable in accordance with paragraph (a) of this section: 238 (Blue and red lights - illegal use or possession); 606 (Display of unauthorized signs or devices); 607(2)(a) (Interference with official devices), but only if the use proximately causes bodily injury to another person; 611(2) (Paraplegic persons or persons with disabilities - distress flag); 705(2), (2.5), and (2.6) (Operation of vehicle approached by emergency vehicle - operation of vehicle approaching stationary emergency vehicle); 1008.5 (Crowding or threatening bicyclist); 1105(1), (2), (3), and (8) (offenses related to speed contests and exhibitions), 1208(11) (fraudulently obtaining, using or making disability placards); 1401 (Reckless driving); 1402 (Careless driving), but only if the violation proximately causes the death or bodily injury to another person); 1409 (Compulsory Insurance); 1413 (Eluding or attempting to elude a police officer); and 1415 (Radar jamming devices prohibited). The violation of any other provision of the Commerce City Traffic Code shall constitute a traffic infraction. Any person convicted of a traffic infraction shall be subject to the penalty of a fine and any surcharge, the total of which shall not exceed the maximum fine permitted pursuant to C.R.S. § 13-10-113, as may be amended from time to time, but shall not be subject to imprisonment.
- (c) Civil infractions. Any person convicted in the municipal court of violating any provision of this Code designated as a civil infraction shall pay a civil penalty for such infraction of not more than the maximum fine permitted pursuant to C.R.S. § 13-10-113, as may be amended from time to time, and may be required to pay all costs, direct and indirect, which the city incurred in connection with the civil infraction, including the cost of abating a nuisance, but shall not be subject to imprisonment except as provided in paragraph (d) of this section. This subsection shall not limit the application of article II of chapter 3 of this Code and the penalties provided therein when the enforcement is conducted through the processes established therein.
- (d) Multiple civil infractions. If a person who is alleged to have committed a violation of any provision of this Code that is classified as a civil infraction has been convicted in the municipal court or found liable through an enforcement order issued pursuant to article II of chapter 3 of this Code of two (2) or more such violations within the twelve-month period immediately preceding the new alleged violation, then, whether or not the previous violations were committed at the same premises as the new alleged violation, the new alleged violation may be charged as a misdemeanor criminal offense that is subject to a penalty or imprisonment, costs, fees and any other orders imposed in accordance with this Code.

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- (e) Penalties for fireworks violations. Any person convicted, including without limitation a plea of guilty or no contest, of a violation of any provision of this Code, including without limitation any edition of the International Fire Code adopted by reference, relating to the unlawful possession, manufacture, storage, sale, handling, discharge or use of fireworks shall be subject to a fine of five hundred dollars (\$500.00) for a first offense and seven hundred and fifty dollars (\$750.00) for each subsequent offense in addition to any other applicable penalty, fee, or cost imposed pursuant to this Code, provided the minimum monetary fine under this subsection shall not be suspended or waived except for persons under the age of eighteen (18) for whom the municipal judge imposes an alternative sentence.
- (f) Penalty for littering and improper dumping. Any person convicted, including without limitation a plea of guilty or no contest, or subject to liability for a civil infraction pursuant to sections 6-2003(c) or 12-3001 of this Code, related to littering or illegal dumping shall be subject to a fine of five hundred dollars (\$500.00) in addition to any other applicable penalty, fee, or cost imposed pursuant to this Code, provided the minimum monetary fine under this subsection may be suspended or waived by the municipal judge as part of an alternative sentence.

END EXHIBIT A

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BEGIN EXHIBIT B

Sec. 3-2103. – Penalties and costs; collection.

- (a) Penalties imposed on the responsible party for a civil infraction enforced under this article shall be as follows, provided the minimum penalties for violations of any provision identified as a civil infraction in chapter 4 of this Code shall be fifty (50) percent of the amounts set forth in this section:
- (1) A minimum penalty of one hundred dollars (\$100.00) shall be imposed against the responsible party for the first violation of a particular code provision within any consecutive twelve-month period.
 - (2) For each successive violation of the same code provision within any twelve-month period, minimum penalties shall be imposed against the responsible party as follows:
 - a. Second violation: three hundred dollars (\$300.00).
 - b. Third violation: five hundred dollars (\$500.00).
 - c. Fourth or greater violation: nine hundred ninety-nine dollars (\$999.00).
 - d. Notwithstanding the foregoing, a minimum penalty of five hundred dollars (\$500.00) shall be imposed against the responsible party for any violation of section 6-2003(c) of this code.
 - (3) Where multiple violations of a single Code provision are found, the applicable minimum penalty shall be imposed for each count.
 - (4) Payment of a penalty shall neither excuse the failure to correct a violation nor bar further enforcement action by the city.
- (b) Costs and fees may be assessed against the responsible party in addition to any applicable penalties under this article as follows:
- (1) Any fees and/or costs authorized by the city council;
 - (2) Actual costs of the protest hearing, including, but not limited to, the per-hour fee charged to the city by the hearing officer. In the event the protestant fails to appear at the protest hearing, one (1) hour of hearing officer time shall be assessed against the protestant. In the event a protest hearing is not held because the protestant has pled liable, has dismissed the protest, or has reached a settlement with the city, the costs provided for in this subsection (b)(2) shall not be assessed;
 - (3) In an enforcement order, other actual costs incurred by the city in the matter and awarded by the hearing officer, including costs of investigation, staffing costs to prepare for the hearing and conduct the hearing, and all reinspections necessary to enforce compliance;
 - (4) Reasonable costs of abating the violation, if applicable, plus an administrative fee equal to fifteen (15) percent of the costs of the abatement unless administrative costs have been awarded.
- (c) Penalties, fees, and costs assessed pursuant to this article shall be paid to the city within thirty (30) days after service of a notice of assessment by first-class U.S. mail to the responsible party; provided, however, that if the property is occupied by someone other than the owner of the property, the notice of assessment shall be mailed to both the occupant and the owner. Service shall be deemed complete upon depositing the notice of assessment in the United States mail, postage prepaid. The failure of any person to receive any assessment required

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under this chapter shall not affect the validity of the assessment or any collection efforts under this section.

- (d) The city shall assess a late fee in an amount set by city council resolution if the responsible party fails to pay any assessment in full within the thirty-day period.
- (e) Failure to pay any such assessment within the thirty-day period shall cause the unpaid amount of the assessment plus any late fee to become a lien against the property identified in the notice of assessment, which lien shall be a first lien having priority over all liens of whatever kind or nature, regardless of date, except general taxes and prior special improvement district assessments. Furthermore, at any time after such failure to pay the assessment and late fee, the same may be certified by the city to the county treasurer, as provided by state statute, to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, with a fifteen (15) percent penalty added to defray the cost of collection.
- (f) The city manager may refer any unpaid fines, fees, and costs for collection by whatever means are available to the city. Any action or other process provided by law may be maintained by the city to recover or collect any amounts, including late fees, interest and administrative costs, owing under this article.

END EXHIBIT B