

**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE:

AGENDA TITLE: Third Reading of Ordinance No. 7496, an ordinance amending Boulder Revised Code Section 5-1-1, "Definitions," and Section 5-2-4, "General Penalties," to increase the maximum fine for bias motivated crimes to \$2,000.

PRESENTER: Ariel Calonne, City Attorney

EXECUTIVE SUMMARY:

Following a public hearing on December 5, 2006, Council directed several amendments to the proposed bias motivated crime sentence enhancement ordinance. These amendments are reflected in the attached ordinance and include:

- Adding age, disability, gender variance and gender identity to the list of characteristics subject to bias motivation sentencing enhancement.
- Adding a finding that acknowledges the City Council's May 16, 2006 adoption of an Anti-Bias Policy for the City of Boulder.
- Adding property crimes to the list of offenses subject to sentence enhancement by including Section 5-4-1, "Damaging Property of Another," B.R.C. 1981.
- Repeating the finding "The City Council does not intend this ordinance to be applied in a manner that suppresses abstract thought or protected speech," in the text of the ordinance.

STAFF RECOMMENDATION:

Council may give third reading to and adopt Ordinance No. 7496.

COUNCIL FILTER IMPACTS:

These impacts were previously analyzed in the December 5, 2006 agenda memo. Adding property crimes will broaden the scope of application of the proposed ordinance.

OTHER IMPACTS:

These impacts were previously analyzed in the December 5, 2006 agenda memo. Adding property crimes will broaden the scope of application of the proposed ordinance. It is unlikely,

but possible, that adding property crimes will cause some staffing impacts. If this occurs, staff will report to the City Council and offer options to address the impacts at that time.

ANALYSIS:

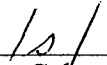
Following a public hearing on December 5, 2006, Council directed several amendments to the proposed bias motivated crime sentence enhancement ordinance. These amendments are reflected in the attached ordinance and include:

- Adding age, disability, gender variance and gender identity to the list of characteristics subject to bias motivation sentencing enhancement.
- Adding a finding that acknowledges the Council's May 16, 2006 adoption of an Anti-Bias Policy for the City of Boulder. The new finding also notes that the Anti-Bias policy rests in part upon the finding that bias motivated crimes affect not only the immediate victim, but the entire class of people who share the characteristic at which the crime was directed.
- Adding property crimes to the list of offenses subject to sentence enhancement by including Section 5-4-1, "Damaging Property of Another," B.R.C. 1981.
- Repeating the finding "The City Council does not intend this ordinance to be applied in a manner that suppresses abstract thought or protected speech" in the text of the ordinance.

Council will note that the addition of age, disability, gender variance and gender identity required the addition of definitions for these terms. Most of the definitions are simply cross-references to the existing definitions of similar terms in the city's Anti-Discrimination ordinance. (Chapter 12-1, "Prohibition of Discrimination in Housing, Employment, and Public Accommodations") The definition of "disability" has been slightly modified to eliminate certain references to housing and employment exceptions that are not applicable to bias motivated crime.

The city attorney and Boulder Community United representatives are satisfied that Section 5-4-1, "Damaging Property of Another," B.R.C. 1981 is sufficiently broad in scope to address property crime issues, including graffiti.

Approved By:



Ariel Pierre Calonne
City Attorney

ATTACHMENT: Ordinance No. 7496

ORDINANCE NO. 7496

AN ORDINANCE AMENDING BOULDER REVISED CODE SECTION 5-1-1, "DEFINITIONS," AND SECTION 5-2-4, "GENERAL PENALTIES," TO INCREASE THE MAXIMUM FINE FOR BIAS MOTIVATED CRIMES TO \$2,000.

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

Section 1. Findings and Determinations. The City Council finds and determines as follows:

- (a) Bias motivated crime is more serious and harmful to the community because it requires a purposeful act through which the criminal singles out a person or group of persons based upon the immutable characteristics of actual or perceived race, color, religion, national origin, age, disability, sexual orientation, or gender, gender identity or gender variance.
- (b) Bias motivated crime is likely to inflict greater individual and societal harm than other crime because bias motivated crime is more likely to provoke retaliatory crimes, inflict distinct emotional harm on victims, and incite community unrest.
- (c) The City Council does not intend this ordinance to be applied in a manner that suppresses abstract thought or protected speech.
- (d) On May 16, 2006, the City Council established and adopted an Anti-Bias Policy for the City of Boulder applicable to the city government and its employees. That policy recognized that bias motivated crimes affect not only the immediate victim, but the entire class of people who share the characteristic at which the crime was directed.
- (~~e~~) For the foregoing reasons, the City Council finds that the public health, safety and general welfare require more stringent, enhanced sentencing to deter bias motivated crime.

Section 2. Section 5-1-1, "Definitions," B.R.C. 1981, is amended to add:

Section 5-1-1 **Definitions.**

"Age" shall mean the chronological age of a person.

“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, national origin, age, disability, sexual orientation, or gender, gender identity or gender variance of another individual or group of individuals. 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”; ~~or~~ 5-3-6, “Use of Fighting Words;” ~~;~~ or 5-4-1, “Damaging Property of Another,” 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.

“Disability” shall mean a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. The term excludes current use of alcohol or drugs.

“Gender identity” and “gender variance” shall have the meaning defined in Section 12-1-1, B.R.C. 1981.

“Gender” shall have the same meaning as the term “sex” defined in Section 12-1-1, B.R.C. 1981.

Section 3. Section 5-2-4, “General Penalties,” B.R.C. 1981, is amended 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 \$1,000.00 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 the defendant acted intentionally, knowingly, or recklessly with respect to the material elements of the violation. Where traffic offenses are concerned, ordinary negligence is sufficient to permit the imposition of jail;
 - (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

- (5) Where the defendant is a child of ten years through and including seventeen years of age, the child may not be sentenced to jail except upon conviction of a moving traffic violation for which penalty points are assessed against the driving privilege under the laws of this state.¹
- (b) Nothing in subsection (a) of this section is intended to:
- (1) Remove or limit the discretion or authority of any public official to charge a child in a court other than the municipal court; or
 - (2) Limit the power of the municipal court to incarcerate a defendant for nonpayment of a fine or for contempt.
- (c) The penalty for violation of any rule or regulations promulgated under authority delegated by the charter, this code, or any ordinance of the city is a fine of not more than \$1,000.00 per violation, except as provided in paragraph (a)(4) of this section.
- (d) The maximum penalty for violation of Sections 5-3-1, "Assault in the Third Degree"; 5-3-2, "Brawling"; 5-3-3, "Physical Harassment"; 5-3-4, "Threatening Bodily Injury"; ~~and~~ 5-3-6, "Use of Fighting Words," and 5-4-1, "Damaging Property of Another," B.R.C. 1981, when the offense is found to be a bias motivated crime, shall be a fine of not more than \$2,000.00 per violation, or incarceration for not more than 90 days in jail, or both such fine and incarceration. The court shall not be required to make the findings required by Section 5-2-4(a)(3) in order to impose a sentence including incarceration. This ordinance shall not be applied in a manner that suppresses abstract thought or protected speech.

Section 4. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the city, and covers matters of local concern.

Section 5. The city council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

¹ Wigent v. Shinsato, 601 P.2d 653 (Colo. App. 1979).

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED
BY TITLE ONLY this 14th day of November, 2006.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

READ ON SECOND READING, AMENDED, AND ORDERED PUBLISHED
BY TITLE ONLY this 5th day of December, 2006.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record

READ ON THIRD READING, PASSED, ADOPTED, AND ORDERED
PUBLISHED BY TITLE ONLY this 16th day of January, 2007.

Mayor

Attest:

City Clerk on behalf of the
Director of Finance and Record