

## ORDINANCE NO. 5

Series 2019

July 16, 2019: Introduced as Council Bill 4, Series 2019 by Councilor Al Blum, seconded by Mayor Pro Tem Katy Brown and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

August 6, 2019: Considered in full text on second reading. Passed by a vote of 5 yes and 0 no.

### **A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AMENDING PROVISIONS OF THE MUNICIPAL CODE TO DECREASE THE MAXIMUM PERIOD OF INCARCERATION AND TO INCREASE THE MAXIMUM FINE FOR MUNICIPAL ORDINANCE VIOLATIONS IN CONFORMANCE WITH STATE LAW**

**WHEREAS**, the City of Cherry Hills Village is a home rule municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the Home Rule Charter of the City of Cherry Hills Village; and

**WHEREAS**, by virtue of Section 7.1 of the City's Home Rule Charter ("Charter") and Article IV of Chapter 2 of the Municipal Code, the City has established a municipal court of record to hear and try all alleged violations arising under the Charter or the ordinances of the City; and

**WHEREAS**, pursuant to Section 7.1(c) of the Charter, the City Council is authorized to provide for the enforcement of its ordinances by fine, imprisonment, or both, within the limits set by state law; and

**WHEREAS**, by enacting House Bill 19-1148, the General Assembly of the State of Colorado amended Section 13-10-113, C.R.S., to decrease the maximum period of incarceration that a court may impose for class 2 misdemeanors, class 2 drug misdemeanors, misdemeanors without a fixed statutory penalty, and municipal ordinance violations from one (1) year to three hundred sixty-four (364) days, effective August 2, 2019; and

**WHEREAS**, as set forth in several provisions in the Municipal Code, the previous maximum authorized period of incarceration that the municipal court could impose was one (1) year; and

**WHEREAS**, the City Council desires to decrease the maximum authorized period of incarceration that the municipal court may impose to conform to state law, as is contemplated by the Charter; and

**WHEREAS**, a new maximum authorized period of incarceration is set forth in numerous sections of the Municipal Code, all of which are amended as set forth herein; and

**WHEREAS**, pursuant to state law, the City Council amended the Municipal Code via Ordinance 10, Series 2013 to reflect an increase in the maximum fine for municipal ordinance violations from \$1,000 to \$2,650, and two sections of the City Code need to be amended to bring them into conformance with state law, as set forth herein.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:**

**Section 1.** Section 1-4-20(a) of the Cherry Hills Village Municipal Code is hereby amended to read as follows, with deletions shown in strike-through and additions underlined:

- (a) Any person who violates or fails to comply with any provision of this Code for which a different penalty is not specifically provided shall, upon conviction thereof, be punished by a fine not exceeding two thousand six hundred fifty dollars (\$2,650.00), as shall be adjusted for inflation on January 1, 2014, and on January 1 of each year thereafter based on the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder, All Items, All Urban Consumers,

or its successor index, or by imprisonment for a period of not more than ~~one~~ (1) year three hundred sixty-four (364) days, or by both such fine and imprisonment, except as provided by Section 1-4-30 below.

**Section 2.** Section 7-1-90(d)(1) of the Cherry Hills Village Municipal Code is hereby amended to read as follows, with deletions shown in strike-through and additions underlined:

(d) In addition to the minimum penalty required by this Subsection, the Court shall be authorized to:

(1) Imprison the defendant for a term not more than ~~three hundred sixty five (365)~~ three hundred sixty-four (364) days for each violation;

**Section 3.** Section 8-1-30(28)(3)(a) of the Cherry Hills Village Municipal Code is hereby amended to read as follows, with deletions shown in strike-through and additions underlined:

<i>Minimum Sentence</i>	<i>Maximum Sentence</i>
"1 day imprisonment, or a fine of \$10.00, or both	<del>1-year</del> <u>Three hundred sixty-four (364) days</u> imprisonment, or a fine of <del>\$1,000</del> <u>not to exceed the maximum fine authorized in Section 1-4-20 of this Code.</u>

**Section 4.** Section 10-11-30(b)(4) of the Cherry Hills Village Municipal Code is hereby amended to read as follows, with deletions shown in strike-through and additions underlined:

(4) In addition to any other penalties that may exist under state, federal and local laws, violation of this Section shall be punishable by a fine not exceeding the maximum fine authorized in Section 1-4-20 of this Code, or by imprisonment not exceeding ~~one (1) year~~ three hundred sixty-four (364) days, or both such fine and imprisonment, as set forth in Section 1-4-20 of this Code.

**Section 5.** Section 10-12-30(b)(4) of the Cherry Hills Village Municipal Code is hereby amended to read as follows, with deletions shown in strike-through and additions underlined:

(4) In addition to any other penalties that may exist under state, federal and local laws, violation of this Section shall be punishable by a fine not exceeding ~~one thousand dollars (\$1,000.00)~~ the maximum fine authorized in Section 1-4-20 of this Code, or by imprisonment not exceeding ~~one (1) year~~ three hundred sixty-four (364) days, or by both such fine and imprisonment, as set forth in Section 1-4-20 of this Code.

**Section 6.** Section 19-1-140(c) of the Cherry Hills Village Municipal Code is hereby amended to read as follows, with deletions shown in strike-through and additions underlined:

(c) Any person who knowingly makes, authorizes, solicits, aids or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this Chapter, or who falsifies, tampers with, bypasses or knowingly renders inaccurate any monitoring device, testing method or testing samples permitted or required under this Chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed the maximum fine authorized in Section 1-4-20 of this Code per day for each violation or imprisonment not to exceed ~~one (1) year~~ three hundred sixty-four (364) days, or both.

**Section 7.** Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the

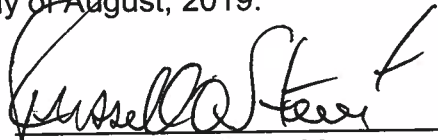
remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this Ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

**Section 8.** Safety. This Ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

**Section 9.** Codification Amendments. The codifier of the City's Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Cherry Hills Village Municipal Code.

**Section 10.** Effective Date. This Ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 5 Series 2019, by the City Council of the City of Cherry Hills Village, Colorado this 6<sup>th</sup> day of August, 2019.

  
Russell O. Stewart, Mayor

ATTEST:

  
Laura Gillespie, City Clerk

APPROVED AS TO FORM:

  
Kathie Guckenberger, City Attorney

Published in the Villager  
Published 8-15-19  
Legal # 9167

CITY OF CHERRY HILLS  
VILLAGE  
ADOPTION OF ORDINANCE  
ORDINANCE 5, SERIES 2019  
  
A BILL FOR AN ORDINANCE OF  
THE CITY OF CHERRY HILLS  
VILLAGE AMENDING PROVI-  
SIONS OF THE MUNICIPAL  
CODE TO DECREASE THE MAX-  
IMUM PERIOD OF INCARCER-  
ATION AND TO INCREASE THE  
MAXIMUM FINE FOR MUNICIPAL  
ORDINANCE VIOLATIONS IN  
CONFORMANCE WITH STATE  
LAW

Copies of the Ordinances are on  
file at the office of the City Clerk  
and may be inspected during regu-  
lar business hours.

Published in The Villager  
Published: August 15, 2019  
Legal # 9167