

<p>DURANGO MUNICIPAL COURT 949 E. 2nd Avenue Durango, CO 81301 Tele: 970.375.5020</p>	
<p>Plaintiff: THE CITY OF DURANGO, v. Defendant: ANTHONY NOCELLA.</p>	
<p>Norman R. Mueller #5853 HADDON, MORGAN AND FOREMAN, P.C. 150 East 10th Avenue Denver, CO 80203 Tel: 303.831.7364 Fax: 303.832.1015 nmueller@hmflaw.com</p> <p>David Albrechta, #48431 Eleni K. Albrechta, #48429 ALBRECHTA & ALBRECHTA, LLC 530 Main Avenue, Ste. D-3 Durango, CO 81301 Tel/Fax: 970.422.3288 David@AlbrechtaLaw.com Eleni@AlbrechtaLaw.com</p> <p>Mark Silverstein, #26979 Rebecca T. Wallace, #39606 ACLU of Colorado 303 E. 17th Ave., Ste. 350 Denver, CO 80203 Tel: 303.777.5482 Fax: 303.777.1773 msilverstein@aclu-co.org rtwallace@aclu-co.org</p> <p><i>Attorneys for Anthony Nocella</i></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case Number: 2017-249</p>
<p>MOTION FOR RECONSIDERATION OF DENIAL OF RIGHT TO JURY TRIAL</p>	

Defendant Anthony Nocella, through counsel, hereby renews his motion for trial by jury on the following grounds:

1. On March 6, 2017, Mr. Nocella, through counsel, filed a request for trial by jury requesting a jury of six. The request noted that the \$25.00 jury fee had been paid. *See* MCO Sec. 15-54(d); C.M.C.R. 223(a). It is therefore undisputed that Mr. Nocella complied with the procedural requirements for obtaining a jury trial.

2. On March 8, 2017, this court denied Mr. Nocella a trial by jury noting that “jail time is not being sought and will not be imposed.”

3. Even though jail time is not being sought and the court will not impose a jail sentence in the event of a conviction, Mr. Nocella is entitled to a jury trial. A prosecutor’s decision not to seek any jail time does not eliminate a defendant’s right to a jury trial.

4. Mr. Nocella is entitled to a jury trial pursuant to § 16-10-109, C.R.S. which guarantees the right to a jury trial for petty offenses. A petty offense is defined as any offense “which is punishable by imprisonment other than in a correctional facility for not more than six months, or by a fine of not more than five hundred dollars, or by both such imprisonment and fine...” *Id.* Since violations of offenses under the Durango municipal code carry a maximum penalty of 90 days imprisonment, *See* Sec. 1-16, offenses in the Durango municipal code are petty offenses entitling defendants to a jury trial under § 16-10-109.

5. For purposes of the statutory right to a jury trial a petty offense also is defined as “a crime or offense classified as a petty offense . . .” Even though the Durango Code does not use the adjective, “petty,” it is clear that Mr. Nocella is charged with two criminal offenses under Chapter 17 of the Durango Municipal Code. *See Bradford v. Longmont Mun. Court*, 830 P.2d 1135 (Colo.App.1992) (charge of theft, codified as “misdemeanor” under Longmont Municipal Code, is a petty offense entitling defendant to jury trial under § 16-10-109). Mr. Nocella is charged with a violation of Sec. 17-60, “Obstructing public streets, places or buildings” which is classified as one of the “Offenses Relating to Property” and a violation of Sec. 17-92, “Prohibitions” regarding parades, which is listed as one of the “Offenses Relating to Parades.” Both are clearly criminal offenses and under § 16-10-109 qualify as petty offenses, rather than, for example, traffic offenses.¹

6. Under § 16-10-109, a petty offense also includes any violation of a municipal ordinance “which was not considered a crime at common law.” The charged offenses are not common law crimes.

¹ If the City Attorney argues that the criminal offenses with which Mr. Nocella is charged are not petty offenses, and that therefore the statutory right to jury trial does not apply, then Mr. Nocella has a constitutional right to a jury trial. The Colorado Constitution requires that an accused shall have the right to a trial by jury in all criminal prosecutions. Colo. Const. art. II, §§ 16, 23. This is clearly a criminal prosecution.

7. Although MCO Sec. 15-54(f) provides that a defendant is not entitled to a jury trial when the defendant is not subject to jail as a potential penalty, §16-10-109 is controlling in this case and grants Mr. Nocella the right to a trial by jury.

8. When enacting the right to a jury trial for municipal petty offense cases, the General Assembly concluded:

“that the right to a trial by jury for petty offenses, as defined in Section 16-10-109, C.R.S., is of vital concern to all of the people of the State of Colorado and that the interests of the state as a whole are so great that the General Assembly shall retain sole legislative jurisdiction over the matter, which is hereby declared to be a state-wide concern.”

Section 13-10-101, C.R.S.

9. In addition, Section 13-10-114(1), provides that:

“In any action before a municipal court in which the defendant is entitled to a jury trial by the constitution or the general laws of the state, such party *shall* have a jury upon request.” (emphasis added)

10. Mr. Nocella therefore is entitled to a jury trial. *See Roalstad v. City of Lafayette*, 2015 COA 146, 363 P.3d 790 (defendant charged with violating ordinance regarding vicious animals entitled to jury trial even though fine is only possible sentence).

WHEREFORE, Mr. Nocella respectfully requests that the court reconsider its previous denial of his timely request for a jury trial and grant him a trial to a jury of six.

Dated: March 27, 2017.

Respectfully submitted,



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Certificate of Service

I certify that on March 27, 2017, a copy of this *Motion for Reconsideration of Denial of Right to Trial by Jury* was served via hand-delivery, electronic mail and regular U.S. Mail, upon the following:

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