

**ORDINANCE NO. 023, 2020  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING THE CODE OF THE CITY OF FORT COLLINS TO  
RECLASSIFY CERTAIN OFFENSES AS PETTY OFFENSES AND UPDATE  
THE POTENTIAL MONETARY PENALTY FOR CODE VIOLATIONS**

WHEREAS, on December 19, 2017, the City Council adopted Ordinance No. 171, 2017, establishing a category of Code violation offenses classified as petty offenses; and

WHEREAS, certain offenses are currently classified as petty offenses under state law but misdemeanors under the Code of the City of Fort Collins; and

WHEREAS, City staff believes certain minor offenses, while appropriately classified as criminal rather than civil offenses, need not have jail as a possible penalty; and

WHEREAS, classifying these minor offenses as civil infractions is also not a satisfactory solution because the Municipal Court cannot issue warrants for failure to appear in court on civil infractions, making them harder to enforce; and

WHEREAS, these minor offenses further merit criminal classification based on their severity but are minor enough that the City would not ask for, nor would the Court impose, a jail sentence for such violations; and the impact of a lifetime misdemeanor conviction is disproportionate to the severity of the offense; and

WHEREAS, Ordinance No. 171, 2017 provided that City staff would review certain civil infractions and misdemeanors in the City Code, determine whether they ought to be reclassified, and bring before City Council for consideration any recommended reclassification; and

WHEREAS, the City Attorney's Office has consulted with City enforcement staff in several departments, including Police Services, Parks and Natural Areas, to develop a list of proposed City Code violations that could properly be reclassified as petty offenses, or charged as petty offenses for a first offense, with a second offense within twelve months classified as a misdemeanor offense; and

WHEREAS, City Code violations that staff recommends be reclassified as petty offenses include:

- Minor possession of tobacco
- Littering
- Use of parking areas
- Possession of graffiti materials by a minor
- Misuse of toxic vapors
- Certain prohibited activities within natural areas
- Certain prohibited activities within parks; and

WHEREAS, City Code violations that staff recommends be reclassified as petty offenses only for a first offense include tampering with refuse containers, and unreasonable noise; and

WHEREAS, the City Code currently sets potential maximum fines for misdemeanors and civil infractions as permitted by state statute and adjusted annually for inflation, but currently limits fines for petty offenses to five hundred dollars (\$500) with no adjustment for inflation over time; and

WHEREAS, the inflation adjustment called for in the City Code makes it hard for anyone looking at the City Code to determine what the actual maximum penalty is for misdemeanors and civil infractions; and

WHEREAS, some of the proposed reclassified offenses may merit fines in excess of five hundred dollars (\$500) under certain circumstances and in alignment with civil infraction fines; and

WHEREAS, City staff is recommending that the maximum potential fine be set at the same amount for all levels of offenses and no longer automatically adjusted for inflation, so that the actual maximum fine is clear in the City Code; and

WHEREAS, based on recent awareness of children possibly being charged with a misdemeanor for throwing snowballs at one another, staff is also proposing amending Section 17-102 of the City Code related to throwing missiles to make it apply only to throwing missiles at vehicles; and

WHEREAS, juveniles are not subject to sentence to incarceration under any circumstances based on a violation of the Code of the City of Fort Collins; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City and are necessary for the health, safety, and welfare of the City's citizens.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Section 1-15 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 1-15. General penalty and surcharges for misdemeanors offenses, petty offenses, traffic offenses, and traffic and civil infractions.**

(a) Except as to petty offenses, traffic infractions described in Subsection (b) below, and any civil infraction specified as such in this Code, any person who shall violate any provision of this Code, the Charter or any provision of any code or other regulation adopted by reference by this Code, by doing any act prohibited or declared to be unlawful thereby, or who shall engage in any business, occupation or activity for which a license or permit is required without having a valid

license or permit therefor, or who shall fail to do any act required by any such provision, or who shall fail to do any act when such provision declares such failure to be unlawful or to be an offense or misdemeanor, shall be guilty of a misdemeanor and, upon conviction, shall be punished by the penalty specifically provided for such violation or, if none, then a fine and any surcharge, the total of which is not to exceed three thousand dollars (\$3,000), or by imprisonment not exceeding one hundred eighty (180) days, or by both such fine and imprisonment, in addition to any costs which may be assessed. No person under the age of eighteen (18) years as of the date of the offense shall be subject to imprisonment except in the case of failure to comply with a lawful order of the court, including an order to pay a fine, and then only in the manner provided in Section 13-10-113, C.R.S., and the Colorado Children's Code, Section 19-1-101 et seq., C.R.S. Each day upon which a violation continues shall constitute a separate misdemeanor offense unless some other specific time period is provided for any particular offense.

(b) A violation of any provision of Chapter 28, Vehicles and Traffic, in this Code or the Fort Collins Traffic Code, shall be deemed to be a traffic infraction if, at the time of the commission of the violation, its counterpart violation under the provisions of Article 4 in Title 42 of the Colorado Revised Statutes, if any, is designated by state law as being a traffic infraction. If no counterpart violation exists under state law, the violation shall be deemed to be a traffic infraction. All other violations under Chapter 28 of this Code or the Fort Collins Traffic Code shall be considered misdemeanors punishable as described in Subsection (a) above. Any person against whom judgment is entered for a traffic infraction under this Code shall be subject to the penalty of a fine and any surcharge, the total of which is not to exceed three thousand dollars (\$3,000), and shall not be subject to imprisonment on account of such judgment.

...

(f) Except as provided in Paragraph (4) below, any person found responsible for a violation of this Code designated as a civil infraction shall pay a civil penalty for such infraction of not more than three thousand dollars (\$3,000).

...

(h) Any person who shall violate any provision of this Code designated as a petty offense shall pay a penalty for such offense of a fine and any surcharge, the total of which is not to exceed three thousand dollars (\$3,000), and shall not be subject to imprisonment on account of such judgment. Jail shall not be a possible penalty for petty offenses. Notwithstanding the provisions of this subsection (h), the maximum fine for a violation of the Code of the City of Fort Collins Article III, Chapter 12 (smoking in public areas) shall be not more than five hundred dollars (\$500).

Section 3. That Section 12-20 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 12-20. Tampering with refuse or rubbish containers prohibited.**

...

(c) Any person who violates any provision of this §12-20 shall be guilty of a petty offense punishable by a fine in accordance with §1-15(h) unless such violation is a second or subsequent violation within a twelve (12) month period. Any person who commits a second or subsequent violation of this § 12-20 within a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

Section 4. That Section 12-98 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 12-98. Minors prohibited from purchasing, possessing or using tobacco products.**

...

(c) Any person who violates any part of this §12-98 is guilty of a petty offense punishable by a fine in accordance with §1-15(h).

Section 5. That Section 17-41 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-41. Littering.**

...

(d) Any person who violates any provision of this § 17-41 shall be guilty of a petty offense punishable by a fine in accordance with § 1-15(h).

Section 6. That Section 17-125 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-125. Use of parking areas.**

(a) Those portions of College Avenue (between Magnolia Street and Maple Street) and Mountain Avenue (between Howes Street and Peterson Street) designated for parking between the curbs of said avenues shall only be used for parking purposes. Any person not remaining inside a vehicle in such parking area shall immediately leave the parking area by the safest direct route. No person shall remain outside a vehicle in such parking area.

(b) Any person who violates this § 17-125 commits a petty offense punishable by a fine in accordance with § 1-15(h).

Section 7. That Section 17-129 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-129 Unreasonable Noise.**

...

(e) Any person who violates this § 17-129 commits a petty offense punishable by a fine in accordance with §1-15(h) unless such violation is a second or subsequent violation within a twelve (12) month period. Any person who commits a second or subsequent violation of this § 17-129 within a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

Section 8. That Section 17-136 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-136. Possession of graffiti materials by minors prohibited.**

...

(c) Any person who violates this § 17-136 commits a petty offense punishable by a fine in accordance with § 1-15(h).

Section 9. That Section 17-162 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 17-162. Use or possession as narcotic prohibited.**

(a) No person shall intentionally smell or inhale the fumes of any substance releasing toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses or nervous system, nor possess, buy or use any such substance for the purpose of violating or aiding another to violate this Section.

(b) Any person who violates this § 17-162 commits a petty offense punishable by a fine in accordance with § 1-15(h). Any person who commits a second or subsequent violation of this § 17-162 within a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

Section 10. That Section 23-193 of the Code of the City of Fort Collins is hereby amended to read as follows:

**Sec. 23-193. Prohibited acts; permits.**

...

(f) Any person who violates subsections (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(12), (a)(14), (a)(17), (b), (d)(2), (d)(3), (d)(5), (d)(11), (d)(12), or (d)(16) of this § 23-193 is guilty of a petty offense punishable by a fine in accordance with § 1-15(h). Any person who violates any other subsection of this § 23-193 commits a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

(g) Any person who violates subsection (a)(16) of this § 23-193 shall be guilty of the level of offense applicable to the underlying violation.

Section 11. That Section 23-203 of the Code of the City of Fort Collins is hereby amended to read as follows:

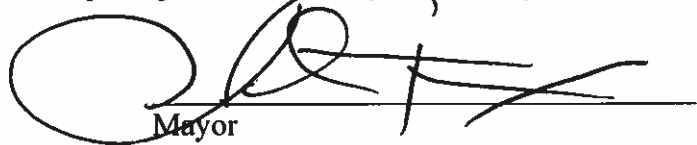
**Sec. 23-203. Prohibited acts; permits.**

...

(f) Any person who violates subsections (a)(3), (a)(9), (a)(10), (a)(12), (b), (d)(3), (d)(10), or (d)(11) of this § 23-203 is guilty of a petty offense punishable by a fine in accordance with § 1-15(h). Any person who violates any other subsection of this § 23-203 commits a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

(g) Any person who violates subsection (a)(15) of this § 23-203 shall be guilty of the level of offense applicable to the underlying violation.

Introduced, considered favorably on first reading, and ordered published this 4th day of February, A.D. 2020, and to be presented for final passage on the 18th day of February, A.D. 2020.

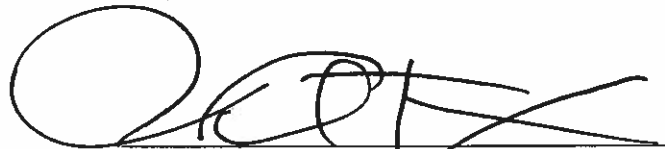
  
Mayor

ATTEST:

  
City Clerk



Passed and adopted on final reading on the 18th day of February, A.D. 2020.

  
Mayor

ATTEST:

  
City Clerk

