

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 14

DATE: April 17, 2007

STAFF: Beth Sowder
Teresa Ablao

SUBJECT

Items Relating to Civil Infraction Penalties, Appeals and Abatement Assessments.

RECOMMENDATION

Staff recommends adoption of these Ordinances on First Reading.

EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 054, 2007, Amending the City Code by Adding a New Section to Chapter 24, Article II, Division 1 Establishing Penalty for Snow Removal Violations.
- B. First Reading of Ordinance No. 055, 2007, Amending the City Code Pertaining to the Appeal of Municipal Referee Orders Regarding Abatement Assessments.

In December of 2006, Council adopted Ordinance No. 198, 2006, which decriminalized certain nuisance provisions of the City Code. Prior to the adoption of that ordinance, nearly all City Code violations were classified as criminal misdemeanors punishable by six months jail and/or \$1,000 fine. Ordinance No. 198, 2006, reclassified many nuisance provisions from criminal to civil violations in an effort to ensure greater compliance and more effective enforcement of Code provisions that affect livability of City neighborhoods. One ordinance provision, Section 24-21, relating to snow removal, was inadvertently omitted from this decriminalization. By adding a new Section 24-22 through the adoption of Ordinance No. 054, 2007, an initial violation of Section 24-21 will be a civil infraction rather than a criminal misdemeanor.

Ordinance No. 198, 2006, also provided for the Municipal Court Referee to hear civil infraction violations and review abatement costs assessed by the City. The amendments proposed by Ordinance No. 055, 2007, clarify the process for appealing referee judgments on civil infraction cases and also provide parameters for the referee to use in deciding the propriety of abatement cost assessments by the City in particular cases.

ORDINANCE NO. 054, 2007
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS
BY ADDING A NEW SECTION TO CHAPTER 24, ARTICLE II, DIVISION 1
ESTABLISHING PENALTY FOR SNOW REMOVAL VIOLATIONS

WHEREAS, Ordinance No. 198, 2006, (the "Ordinance") decriminalized certain nuisance violations; and

WHEREAS, Council and staff intended to include in the Ordinance a provision making a violation of Section 24-21, relating to snow and ice removal, a civil infraction, which provision was inadvertently omitted from the Ordinance; and

WHEREAS, Council finds the proposed amendments to the Code on this subject are in the best interest of the City and promote the public health, safety and welfare of the citizens of the City of Fort Collins.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Article II, Division 1 of Section 24 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 24-22 which reads in its entirety as follows:

Sec. 24-22. Violations and penalties.

Any person who violates any provision of this Article commits a civil infraction and is subject to a civil penalty, costs and fees as provided for in § 1-15. If a person commits three (3) or more violations in twelve (12) consecutive months of any provision of this Code classified as a civil infraction, the third such violation and any subsequent violations within said twelve (12) month period shall constitute a misdemeanor criminal offense and shall be subject to a penalty or imprisonment, costs and fees and any other orders imposed in accordance with § 1-15.

Introduced, considered favorably on first reading, and ordered published this 17th day of April, A.D. 2007, and to be presented for final passage on the 1st day of May, A.D. 2007.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 1st day of May, A.D. 2007.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 055, 2007
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS
PERTAINING TO THE APPEAL OF MUNICIPAL REFEREE ORDERS
REGARDING ABATEMENT ASSESSMENTS

WHEREAS, Ordinance No. 198, 2006, established a procedure for the Municipal Judge to appoint a referee to hear civil infractions and review abatement assessments; and

WHEREAS, City staff believes it would be helpful to clarify the review process for such infractions and abatement assessments and to add parameters for the referee when reviewing assessments; and

WHEREAS, Council finds the proposed amendments to the Code on this subject are in the best interest of the City and promote the public health, safety and welfare of the citizens of the City of Fort Collins.

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

Section 1. That Section 19-36(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-36. Creation; jurisdiction; qualifications.

(a) The Municipal Judge is authorized and empowered to appoint one (1) or more Referees to hear certain municipal ordinance violations relating to parking or Municipal Code violations designated as civil infractions, and to review any costs of abatement or removal ~~in connection with a violation of a~~ **assessed pursuant to** civil infraction provisions of the Code, as the Municipal Judge may from time to time designate. Such alleged violations may include any offense or infraction which may now or in the future be included in the schedule of payable fines established by the Municipal Judge pursuant to law except any offense which might result in the assessment of points by the State Department of Revenue against the responsible party's driving license or privilege.

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Section 2. That Section 19-37 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-37. Defendant's right to hearing before Judge.

Prior to conducting a hearing **on a civil infraction or parking citation**, the Referee shall inform the defendant that he or she has the right to a trial before the Municipal Judge. If such request is made, the Referee shall terminate the hearing and refer the

matter to the Municipal Court for trial.

Section 3. That Section 19-39(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-39. Order of the Referee.

(a) At the completion of any hearing on a civil infraction or parking citation held under the provisions of this Article, the Referee shall enter an order either:

- (1) Excusing or dismissing a citation if the Referee finds that the violation has not been sustained by the evidence presented; or
- (2) Making a finding of guilt or responsibility, based upon either a plea of guilty entered or an admission of responsibility tendered, failure of the defendant to appear for the hearing or the evidence presented at the hearing; and assessing a penalty against the defendant within the schedule of fines published by the Municipal Judge or set by ordinance which was in effect at the time of the violation; and entering any orders or assessing any costs and/or fees that may be permitted pursuant to § 1-15 or any other ordinance or resolution; or
- (3) Referring the case to the Municipal Court for hearing before the Municipal Judge where the Referee determines, in the exercise of the Referee's discretion, that the facts of the particular case or the issues raised therein require such a hearing. Statements made by the defendant during the course of the hearing before the Referee shall not be introduced against the defendant at any subsequent proceeding before the Municipal Court, nor may the Referee hearing the case be called as a witness against the defendant.

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Section 4. That Section 19-41 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-41. Authorization to reduce or waive penalties and assessments.

(a) For parking violations, the Referee may assess a penalty less than the payable fine prescribed in the schedule of fines published by the Municipal Judge or may suspend such fine in any case where, in the sound exercise of the Referee's determines, discretion, based upon evidence obtained during the course of the hearing, that such action would be in the best interests of justice.

(b) For all other civil infractions, the Referee shall assess a penalty within the range of fines established by ordinance or in the schedule of fines published by the

Municipal Judge. In addition, the Referee may impose any other costs, damages, expenses and orders that may be authorized under Subsection 1-15(f).

(c) The Referee may also reduce or waive any costs or fees assessed by the City in connection with the abatement or removal of a nuisance, except those fees that may be imposed by the City to defray the cost of hearing an appeal of the amount of the assessment, if the Referee determines, based upon mitigating circumstances, that such reduction or waiver would be in the best interests of justice.

Section 5. That Section 19-42 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-42. Appeal of decisions.

(a) Any defendant affected by a final order or judgment of a Referee **with respect to parking and civil infraction citations**, under the authority of this Article, may appeal the Referee's final order or judgment to the Municipal Court by filing a written notice of appeal with the Municipal Court Clerk within ten (10) days after the entry of the final order or judgment and depositing with the Municipal Court a fee for preparing the record, or portions thereof designated. Upon the filing of the notice of appeal, no stay of execution of the Referee's order or action shall be granted until the appellant has deposited with the Municipal Court a cash bond in the amount of any fines and costs imposed by the Referee.

(b1) If for any reason an adequate record cannot be certified to the Municipal Court, the case shall be tried de novo by the Municipal Judge. No action on appeal shall result in an increased penalty.

(c2) If a notice of appeal is not filed within ten (10) days after the final order or judgment or the order or action is not vacated by the Municipal Judge upon the motion of the Municipal Judge within such period, the order or action of the Referee shall be final.

(d3) In no event shall the Referee testify on appeal regarding any action previously before the Referee, except concerning actions in the nature of contempt, including failure to appear.

(e4) Appeals shall be in accordance with Rule 37 of the Colorado Rules of Criminal Procedure.

(b) A Referee's decision regarding abatement or removal assessment reviews is final.

Introduced, considered favorably on first reading, and ordered published this 17th day of April, A.D. 2007, and to be presented for final passage on the 1st day of May, A.D. 2007.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 1st day of May, A.D. 2007.

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