

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 21

DATE: August 19, 2003

FROM: Gary Perman

SUBJECT:

First Reading of Ordinance No. 113, 2003, Amending Chapter 1 of the City Code Relating to General Provisions and Repealing Identical Sections Contained Elsewhere in the Code.

RECOMMENDATION:

Staff recommends adoption of the Ordinance on First Reading.

EXECUTIVE SUMMARY:

Under State law, the principles of complicity and corporate liability apply to all criminal offenses.

The City Code applies these principles only to the offenses contained in Chapter 17 and Section 12-99(e), relating to the sale and use of tobacco products. There are other offenses under the City Code, for example, sales tax and licensing violations, environmental regulation violations, fire code and noise violations, which cannot presently be prosecuted under the principles of complicity or corporate liability. City staff recommends that the complicity and corporate liability principles be applied to all violations of the City Code to be consistent with state law and to ensure effective enforcement of all code provisions.

If the Code is amended to make the complicity and corporate liability provisions applicable to all offenses under the Code, the provisions currently contained in Sections 17-4, 17-5, 17-6, and 12-99(e) will be redundant and should be repealed.

ORDINANCE NO. 113, 2003
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 1 OF THE CODE OF THE
CITY OF FORT COLLINS RELATING TO GENERAL PROVISIONS AND REPEALING
IDENTICAL SECTIONS CONTAINED ELSEWHERE IN THE CODE

WHEREAS, state and common law principles of complicity and corporate liability apply to all criminal offenses; and

WHEREAS, the current provisions of the City Code apply these principles only to the offenses contained in Chapter 17 and Section 12-99(e); and

WHEREAS, there are other offenses under the City Code such as sales tax and licensing violations, environmental regulation violations, fire code and noise violations, which cannot presently be prosecuted under the principles of complicity or corporate liability; and

WHEREAS, there is a need to apply complicity and corporate liability principles to all violations of the City Code to be consistent with state law and to ensure effective enforcement of all Code provisions; and

WHEREAS, once the complicity and corporate liability provisions are made applicable to all offenses under the Code, the provisions currently contained in Sections 17-4, 17-5, 17-6, and 12-99(e) would be redundant and should be repealed.

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

Section 1. That Chapter 1 of the Code of the City of Fort Collins is hereby amended so as to add new Sections, to be numbered as shown below, and to renumber the existing Section 1-19 as Section 1-22:

Sec. 1-19. Accountability; behavior of another; complicity.

(a) A person is guilty of an offense described in this Code committed by the behavior of another individual if:

- (1) Such person is made accountable for the conduct of that other individual by the Section in this Chapter which defines the violation or by any other specific provision of this Code or other ordinance of the City; or
- (2) Such person acts with the culpable mental state sufficient for the commission of the offense in question and causes an innocent individual to engage in such behavior. For the purpose of this subsection, *innocent individual* shall mean any individual's behavior, because of duress, legal incapacity or exemption, or because such individual was unaware of the

illegal nature of the conduct in question or of the defendant's criminal purpose, or because of any other factor which precludes the mental state required for the commission of the offense in question.

(b) A person is legally accountable as principal for the behavior of another constituting an offense described in this Code if, with intent to promote or facilitate the commission of the offense, such person aids, abets, or advises or encourages the other individual in planning or committing the offense.

(c) It shall be an affirmative defense under Subsection (b) of this Section, if prior to the commission of the offense, the defendant terminated his or her efforts to promote or facilitate its commission and either gave timely warning to law enforcement authorities or gave timely warning to the intended victim.

(d) In any prosecution for an offense in which criminal culpability or civil liability is based upon the behavior of another, it is no defense that the other person has not been prosecuted for, or convicted of any offense based upon the behavior in question or has been convicted of a different offense, or the defendant belongs to a class of persons who by definition of the offense is legally incapable of committing the offense in an individual capacity.

Sec. 1-20. Liability of corporation.

(a) A corporation is guilty of, or liable for, an offense described in this Code if:

- (1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or
- (2) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment or on behalf of the corporation.

(b) As used in this Section, *agent* means any director, officer or employee of a corporation, or any other person who is authorized to act on behalf of the corporation, and *high managerial agent* means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

Sec. 1-21. Liability of an individual for corporate conduct.

A person is guilty of, or liable for, conduct constituting an offense described in this Code which he or she performs or causes to occur in the name of or in behalf of a corporation to the same extent as if that conduct were performed or caused by him or her in his or her own name or on his or her own behalf.

Section 2. That Sections 17-4, 17-5, and 17-6 of the Code of the City of Fort Collins are hereby repealed in their entirety.

Sec. 17-4. ~~Accountability; behavior of another; complicity.~~

~~(a) A person is guilty of an offense described in this Chapter committed by the behavior of another individual if:~~

~~(1) Such person is made accountable for the conduct of that other individual by the Section in this Chapter which defines the violation or by any other specific provision of this Code or other ordinance of the city; or~~

~~(2) Such person acts with the culpable mental state sufficient for the commission of the offense in question and causes an innocent individual to engage in such behavior. For the purpose of this Subsection, *innocent individual* shall mean any individual who is not guilty of the offense in question, despite such individual's behavior, because of duress, legal incapacity or exemption, or because such individual was unaware of the illegal nature of the conduct in question or of the defendant's criminal purpose, or because of any other factor which precludes the mental state required for the commission of the offense in question.~~

~~(b) A person is legally accountable as principal for the behavior of another constituting an offense described in this Chapter if, with intent to promote or facilitate the commission of the offense, such person aids, abets or advises the other individual in planning or committing the offense.~~

~~(c) It shall be an affirmative defense under Subsection (b) of this Section, if prior to the commission of the offense, the defendant terminated his or her efforts to promote or facilitate its commission and either gave timely warning to law enforcement authorities or gave timely warning to the intended victim.~~

~~(d) In any prosecution for an offense in which criminal liability is based upon the behavior of another, it is no defense that the other person has not been prosecuted for, or convicted of any offense based upon the behavior in question or has been convicted of a different offense, or the defendant belongs to a class of persons who by definition of the offense is legally incapable of committing the offense in an individual capacity.~~

Sec. 17-5. — Criminal liability of corporations:

(a) — A corporation is guilty of an offense if:

(1) — The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(2) — The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment or on behalf of the corporation.

(b) — As used in this Section, *agent* means any director, officer or employee of a corporation, or any other person who is authorized to act on behalf of the corporation, and *high managerial agent* means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

Sec. 17-6. — Criminal liability of an individual for corporate conduct:

A person is criminally liable for conduct constituting an offense which he or she performs or causes to occur in the name of or in behalf of a corporation to the same extent as if that conduct were performed or caused by him or her in his or her own name or on his or her own behalf.

Section 3. That Section 12-99(e) of the Code of the City of Fort Collins is hereby repealed in its entirety.

(e) — The provisions of §§ 17-4, 17-5 and 17-6 of this Code shall be applicable to all violations under this Article.

Introduced, considered favorably, and ordered published this 19th day of August A.D. 2003, and to be presented for final passage on the 2nd day of September, 2003.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 2nd day of September, A.D. 2003.

Mayor

ATTEST:

City Clerk