

SUBJECT

Items Relating to Civil Infraction and Abatement Procedures.

- A. First Reading of Ordinance No. 126, 2011, Amending Article V of Chapter 19 of the City Code Pertaining to Rules for Civil Infractions and Making Editorial Corrections to Article V.
- B. First Reading of Ordinance No. 127, 2011, Amending Article IV of Chapter 20 of the City Code to Allow for an Appeal Process to Contest the Assessment of Costs of Weeds and Rubbish Abatements and Making Editorial Corrections to Article IV.

EXECUTIVE SUMMARY

The amendments to Article V of Chapter 19 of the City Code will allow staff to make payment plan arrangements with defendants for the amount due for civil infractions, and to extend a defendant's timeframe within which to satisfy judgment after a final hearing to a reasonable period of time beyond thirty days.

The amendments to Article IV of Chapter 20 of the City Code will provide the option of an appeal process for weed and/or rubbish abatement invoices with the Director of Community Development & Neighborhood Services (CDNS) or with the Municipal Court Referee which is consistent with the appeal process for sidewalk snow removal abatements.

BACKGROUND / DISCUSSION

Currently the Code requires payment in full for civil infraction fines from defendants within ten days after the service of the citation. Additionally, the Code limits a defendant's timeframe within which to satisfy judgment after a final hearing to thirty days. Recently, staff has heard that it is difficult for some defendants to pay the full fine within ten days of service of the citation or to satisfy the final judgment within thirty days of the final hearing, and it would be helpful if staff could offer a payment plan and to extend the timeframe of thirty days to a reasonable period of time so that the defendant can pay the fine. Offering this flexibility will help defendants who are unable to pay the fine, and may help the City collect the fine without the need to use a collection agency.

Additionally, the Code currently allows for the option of an appeal for a sidewalk snow removal abatement invoice with the CDNS Director, or his or her designee, or the Municipal Court Referee, but the Code does not allow this option for weed and rubbish abatements. This Code amendment would make this appeal process consistent for both weed and rubbish abatements and sidewalk snow removal abatements.

FINANCIAL / ECONOMIC IMPACTS

This change may help the City recover more fines without the need to use a collection agency. This flexibility will help defendants pay the fine in a reasonable amount of time.

STAFF RECOMMENDATION

Staff recommends adoption of these Ordinances on First Reading.

PUBLIC OUTREACH

Defendants will be told about the ability to make payment plan arrangements and the appeal process when they are provided information about the civil infraction process or when they receive an abatement invoice.

ORDINANCE NO. 126, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING ARTICLE V OF CHAPTER 19 OF THE CODE
OF THE CITY OF FORT COLLINS PERTAINING TO RULES FOR
CIVIL INFRACTIONS AND MAKING EDITORIAL CORRECTIONS
TO ARTICLE V

WHEREAS, Section 19-66 of the City Code allows the Community Development & Neighborhood Services Director or Forestry Director to accept a defendant's payment in full for a civil infraction if it is made within ten days after the service of the citation; and

WHEREAS, Section 19-66 of the City Code does not allow for an option of a payment plan; and

WHEREAS, staff has heard complaints from numerous defendants that it is difficult to make a payment in full without the option of a payment plan; and

WHEREAS, Section 19-69 of the City Code limits a defendant's timeframe within which to satisfy judgment after a final hearing to 30 days; and

WHEREAS, staff has heard complaints from numerous defendants that it is difficult to make those payments within the 30-day timeframe; and

WHEREAS, staff recommends modifying Section 19-66 to allow for an option of a payment plan and Section 19-69 to eliminate the 30-day restriction and to allow a defendant a reasonable period of time within which to satisfy judgment after a final hearing; and

WHEREAS, staff has identified other minor amendments that should be made to City Code Section 19 related to civil infractions, including updating department titles; and

WHEREAS, the City Council believes that it would be in the best interests of the City to approve these recommended amendments to the City Code.

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

Section 1. That the title of Section 19-64 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-64. No jury of trial for infractions.

...

Section 2. That Section 19-65(a)(1) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-65. Commencement of action; citation procedure.

(a) Officers shall have the authority to initiate enforcement proceedings as provided below.

- (1) An officer who has reasonable grounds to believe that a responsible party has committed a civil infraction under this Code is authorized to serve a notice of violation to the responsible party. Except as otherwise provided in this Code, the officer shall set a reasonable time period within which the responsible party must correct the violation. This determination shall be based on considerations of fairness, practicality, ease of correction, the nature, extent and probability of danger or damage to the public or property, and any other relevant factor relating to the reasonableness of the time period prescribed. An officer may immediately serve a civil citation to a responsible party, without prior notice, if there is reason to believe that the violation presents a threat to the public health, safety or welfare, ~~if~~**for** the damage done by the violation is irreparable or irreversible, or ~~if~~ the alleged violation is of Land Use Code Section 3.8.16 pertaining to occupancy limits.

...

Section 3. That Section 19-66(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-66. Payment without appearance.

(a) ~~The Neighborhood and Building Services~~**Community Development and Neighborhood Services** Director or, in the case of a forestry code violation, the Forestry Director, shall accept payment **in full** of the amount due for a civil infraction from a defendant **or make a payment plan arrangement with a defendant** if such payment **or payment plan arrangement** is made within ten (10) days following service of the citation for the violation. Such payment shall be separately accounted for and deposited into the City's general fund in accordance with rules and procedures of the Finance Department.

...

Section 4. That Section 19-68(a) of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-68. Subpoenas and discovery.

(a) At the request of any party to the hearing, the **Municipal Judge or** Referee may subpoena witnesses, documents or other evidence where the attendance of the witness or the admission of evidence is necessary to decide the issues at the hearing. The issuance and service of a subpoena shall be as provided in Rule 217, C.M.C.R.

...

Section 5. That Section 19-69 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-69. Judgment and procedures after hearing.

(a) If the civil infraction is proven by a preponderance of the evidence, the **Municipal Judge or** Referee shall find the defendant liable for the violation and enter appropriate judgment. If, however, the civil infraction is not proven by a preponderance of the evidence, the Referee shall dismiss the charge and enter appropriate judgment.

(b) If the defendant is found liable, the **Municipal Judge or** Referee shall assess the appropriate penalty and any additional costs or fees authorized by law or ordinance.

(c) The judgment shall be satisfied upon payment to the ~~Neighborhood and Building Services~~ **Community Development and Neighborhood Services Director** or Forestry Director, with respect to forestry code violations, in the total amount of penalty, costs and fees assessed.

(d) If the defendant fails to satisfy the judgment immediately following the final hearing or within the time allowed by a reasonable extension, ~~not to exceed thirty (30) days~~ granted upon a showing of good cause by and upon application of the defendant, then such failure shall be treated as a default.

Section 6. That Section 19-71 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-71. Continuances.

Continuances may be granted by the **Municipal Judge or** Referee only upon a showing of good cause by the City or the defendant.

Introduced, considered favorably on first reading, and ordered published this 20th day of September, A.D. 2011, and to be presented for final passage on the 4th day of October, A.D. 2011.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading on the 4th day of October, A.D. 2011.

Mayor

ATTEST:

Chief Deputy City Clerk

ORDINANCE NO. 127, 2011
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADDING A SECTION IN ARTICLE IV OF CHAPTER 20 OF THE CODE
OF THE CITY OF FORT COLLINS TO ALLOW FOR AN
APPEAL PROCESS TO CONTEST THE ASSESSMENT OF COSTS OF
WEED AND RUBBISH ABATEMENTS AND MAKING EDITORIAL
CORRECTIONS TO ARTICLE IV

WHEREAS, Section 20-44 of the City Code does not currently allow for an option to appeal the assessment of costs of a weed or rubbish abatement; and

WHEREAS, staff has found over the years that property owners and occupants often wish to challenge the assessment of costs of weed and/or rubbish abatements; and

WHEREAS, City Code Section 20-102(b) allows for a property owner or occupant to contest the assessment of costs for sidewalk snow removal abatements; and

WHEREAS, staff recommends amending Section 20-44 to include an appeal process similar to the appeal process set forth in Section 20-102(b) for sidewalk snow removal abatements; and

WHEREAS, staff recommends amending Section 20-44 to include an appeal process to allow for a property owner or occupant to contest the assessment of costs of a weed or rubbish abatement; and

WHEREAS, staff has identified other minor amendments that should be made to City Code Section 20-44, including updating department titles; and

WHEREAS, the City Council believes that it would be in the best interests of the City to amend the City Code as described herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS Section 20-44 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 20-44. Notice of violation; removal authority and procedure; assessment lien on property.

(a) The ~~Neighborhood and Building Services Director~~ **Community Development and Neighborhood Services Director** and any officer, as such is defined in § 19-66, are authorized and directed to give notice to any owner and occupant whose property, open area, ditch or right-of-way is being kept or maintained in violation of the provisions of this Article. Such notice may be personally served upon such person or, if not personally served, shall be deposited in the United States mail, addressed to the occupant and owner of record at the address on the assessment roll of the County Assessor or at such other, more recent address as may be available to the City, or with respect to notice to occupants, at the address of the property so

occupied. The notice shall state that, if the property, open area, ditch or right-of-way has not been brought into compliance with this Article on or before five (5) days from the date of such notice, a civil citation will issue and the abatement of the nuisance will be done by the City and any costs of abatement, including the cost of inspection, the cost of any grading or sloping necessary to protect the public safety and other incidental costs in connection therewith and the costs for carrying charges and costs of administration will be charged against the property, open area, ditch or right-of-way, in addition to any other penalty and costs or orders that may be imposed. With respect to rubbish only, the notice shall also state that, if said owner desires a hearing before the Referee to contest the declaration of nuisance and/or the removal, such owner shall request such hearing in writing to the Director of ~~Neighborhood and Building Services~~ **Community Development and Neighborhood Services** within five (5) days of mailing of the notice and shall further state that, if a request for such hearing is made, the City will remove the rubbish in accordance with Subsection (b) below and will store the material pending the holding of the hearing and the determination therefrom. The notice shall further state that if no request for such hearing is timely filed, the City will remove the rubbish in accordance with Subsection (b) below and shall destroy or otherwise dispose of the rubbish.

(b) If the property, open area, ditch or right-of-way has not been brought into compliance with this Article within five (5) days from the date of the notice and if the owner has not requested a hearing before the Referee to contest the declaration of nuisance and/or the removal as provided in Subsection (a) above, the removal may be done by the City, either by City personnel or by private contractors, as the Director of ~~Neighborhood and Building~~ **Community Development and Neighborhood Services** shall determine. In the event of such removal by the City, the cost, including inspection, removal of obstructions, if any, the cost of any grading or sloping necessary to protect the public safety, other incidental costs in connection therewith, and the costs for carrying charges and administration shall be assessed against the offending property, open area, ditch or right-of-way and the owner thereof. With respect to rubbish only, if the owner has requested a hearing pursuant to the provisions of Subsection (a), removal of the rubbish may be accomplished as provided in this Subsection; provided, however, that such material removed shall be stored by the City until such time as the Referee holds the hearing and determines, based upon the evidence presented by the owner and the staff of the City, whether the nuisance should have been declared and the rubbish removed. If the Referee determines that the declaration of nuisance and removal are proper, then the rubbish shall be destroyed or otherwise disposed of by the City, and the additional costs of storage shall be assessed, together with all other costs, as provided above. If the Referee determines that the declaration of nuisance and removal were improper, then the material shall be returned to the owner and no costs shall be assessed.

(c) **If the property owner or occupant contests the assessment of costs with regard to weeds and/or rubbish, he or she shall file a written request for review of such assessment of costs with the Director of Community Development**

Neighborhood Services, or a written request for a hearing on the same before the Referee, within ten (10) days from the service of notice of assessment.

(ed) Any cost assessment shall be a lien in the several amounts assessed against each property, open area, ditch or right-of-way from the date the assessment became due until paid and shall have priority over all other liens, except general taxes and prior special assessment liens. Any such assessment shall be billed by the Director of ~~Neighborhood and Building~~ **Community Development and Neighborhood Services**, or his or her designee, to the owner by deposit in the United States mail addressed to the owner of record at the address as shown on the tax rolls or such other, more recent address as may be available to the City, and to any agents, representatives or occupants as may be known. If any such assessment is not paid within thirty (30) days after it has been billed, the Financial Officer, or his or her designee, is hereby authorized to thereafter certify to the County Treasurer the list of delinquent assessments so billed, giving the name of the owner as it appears of record, the number of the lot and block and the amount of the assessment plus a ten-percent penalty. The certification shall be the same in substance and form as required for the certification of other taxes. The County Treasurer, upon receipt of such certified list, is hereby authorized to place it upon the tax list for the current year and to collect the assessment in the same manner as general property taxes are collected, together with any charges as may by law be made by the County Treasurer and all laws of the State for the assessment and collection of general taxes, including the laws for the sale of property for unpaid taxes and the redemption thereof, shall apply to and have full force and effect for the collection of all such assessments. Notwithstanding the foregoing, if the offending property, open area, ditch or right-of-way is not subject to taxation, the City may elect alternative means to collect the amounts due pursuant to this Article, including the commencement of an action at law or in equity and, after judgment, pursue such remedies as are provided by law.

Introduced, considered favorably on first reading, and ordered published this 20th day of September, A.D. 2011, and to be presented for final passage on the 4th day of October, A.D. 2011.

Mayor

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