

AGENDA ITEM SUMMARY

February 16, 2016

City Council

STAFF

Carrie Daggett, City Attorney

SUBJECT

Second Reading of Ordinance No. 019, 2016, Adding a New Section 1-23 to the Code of the City of Fort Collins to Establish a One-Year Limitation for the Prosecution of City Code Violations in Fort Collins Municipal Court.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on February 9, 2016, adds a new Section 1-23 to the City Code to establish a one-year time limitation, subject to certain tolling provisions, for how long after a person violates a provision of the City Code that the person can be prosecuted in Fort Collins Municipal Court (Municipal Court). The City Charter places a one-year time limitation on prosecutions of Charter violations in Municipal Court, but neither the Charter nor the Code establishes a similar time limitation for Code violations. As a result, the current controlling time limitation for prosecutions of Code violations in Municipal Court is a one-year limitation with no tolling provisions that is set by state statute in C.R.S. Section 31-16-111. However, as a home rule municipality, the City can establish its own time limitation and tolling provisions for such prosecutions, as proposed in this Ordinance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, February 9, 2016 (PDF)
2. Ordinance No. 019, 2016 (PDF)

AGENDA ITEM SUMMARY

February 9, 2016

City Council

STAFF

Carrie Daggett, City Attorney

SUBJECT

First Reading of Ordinance No. 019, 2016, Adding a New Section 1-23 to the Code of the City of Fort Collins to Establish a One-Year Limitation for the Prosecution of City Code Violations in Fort Collins Municipal Court.

EXECUTIVE SUMMARY

The purpose of this item is to add a new Section 1-23 to the City Code to establish a one-year time limitation, subject to certain tolling provisions, for how long after a person violates a provision of the City Code that the person can be prosecuted in Fort Collins Municipal Court ("Municipal Court"). The City Charter places a one-year time limitation on prosecutions of Charter violations in Municipal Court, but neither the Charter nor the Code establishes a similar time limitation for Code violations. As a result, the current controlling time limitation for prosecutions of Code violations in Municipal Court is a one-year limitation with no tolling provisions that is set by state statute in C.R.S. Section 31-16-111. However, as a home rule municipality, the City can establish its own time limitation and tolling provisions for such prosecutions, as proposed in this Ordinance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In Section 16 of Article IV of the City Charter, the prosecution of a violation of the Charter must be commenced in Municipal Court within one year of the date of the violation. Neither the City Charter nor the City Code currently establishes a similar time limitation for the prosecution of City Code violations in Municipal Court. These kinds of time limitations are often called "statutes of limitations."

Although in a few instances the City Code sets a time limitation for a particular offense, there is no general time limitation for the prosecution of Code violations in the City Charter or Code. As a result, the controlling time limitation for City Code violations generally is found in C.R.S. Section 31-16-111, which imposes a one-year time limitation on prosecutions in the municipal courts of all municipalities except for those home rule municipalities that have set such a time limitation in their charter or code. As a home rule municipality, the City can establish its own time limitation for Code violations prosecuted in Municipal Court.

Since a general time limitation is currently not expressly stated in the Code, the City must refer to the state statute for that time period. This has sometimes caused confusion for citizens reporting Code violations and for those charged with them. Clearly stating this time limitation in the City Code will help to eliminate this confusion.

The one-year time limitation proposed here will also be subject to tolling provisions that will stop the running of the one-year time limitation for any period of time the accused is absent from the City, for up to one year, and during the time the accused is being prosecuted in another case for the same conduct, which tolling provisions are not in the controlling state statute applicable to municipalities (Section 31-16-111), but they are in the state's statutes of limitations for its criminal offenses.

CITY FINANCIAL IMPACTS

This will have no financial impact on the City.

COPY

ORDINANCE NO. 019, 2016
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ADDING A NEW SECTION 1-23 TO THE CODE OF THE CITY OF FORT
COLLINS TO ESTABLISH A ONE-YEAR LIMITATION FOR THE PROSECUTION
OF CITY CODE VIOLATIONS IN FORT COLLINS MUNICIPAL COURT

WHEREAS, in Section 16 of Article IV of the City Charter, the prosecution of a violation of the Charter must be commenced in the Fort Collins Municipal Court (“Municipal Court”) within one year of the date of the violation; and

WHEREAS, neither the City Charter nor the City Code currently establishes a similar time limitation for the prosecution of violations of the Code in Municipal Court; and

WHEREAS, since there is no such time limitation for the prosecution of Code violations in the City Charter or Code, the City’s current controlling time limitation is found in C.R.S. Section 31-16-111, which statute imposes a one-year time limitation on such prosecutions in the municipal courts of all municipalities except for those home rule municipalities which have set such a time limitation in their charter or code; and

WHEREAS, as a home rule municipality, the City can therefore establish its own time limitation for City Code violations prosecuted in Municipal Court; and

WHEREAS, by not expressly stating in the Code a time limitation for the prosecution of Code violations, but instead having to refer a state statute, this has sometimes caused confusion for citizens reporting Code violations and for those charged with them; and

WHEREAS, clearly stating this time limitation in the City Code will help to eliminate this confusion; and

WHEREAS, the one-year time limitation proposed here will also be subject to tolling provisions which will stop the running of the one-year time limitation for any period of time the accused is absent from the City, for up to one year, and during the time the accused is being prosecuted in another case for the same conduct, which tolling provisions are not in the controlling state statute applicable to municipalities (Section 31-16-111), but are in the state’s statutes of limitations for its criminal offenses.

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 the Code of the City of Fort Collins is hereby amended by adding a new section, to be numbered 1-23, which section reads as follows:

Sec. 1-23. Time to initiate a prosecution

(a) Except as provided in paragraph (b) of this Section or as provided otherwise in this Code for a particular violation, no person shall be prosecuted, tried or punished for any violation of this Code unless within one (1) year of the date of the violation the prosecution is initiated in Municipal Court as provided in Rule 204(a) of the Colorado Municipal Court Rules of Procedure or the person is served with a summons and complaint as provided in paragraph (e) of Rule 204.

(b) The time limitation imposed by paragraph (a) of this Section shall be tolled with respect to the person prosecuted for: (1) any time period, not to exceed one (1) year, during which the person is absent from the City; and (2) any time period during which a prosecution is pending against the person for the same conduct, even if that prosecution is dismissed or reversed on appeal.

(c) When any violation of this Code is based on a series of acts performed at different times, the period of limitations set by this Section shall start at the time when the last act in the series of acts is committed.

Introduced, considered favorably on first reading, and ordered published this 9th day of February, A.D. 2016, and to be presented for final passage on the 16th day of February, A.D. 2016.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 16th day of February, A.D. 2016.

Mayor

ATTEST:

City Clerk