

AGENDA ITEM SUMMARY

April 18, 2017

City Council

STAFF

Judge Kathleen M. Lane, Municipal Judge
Carrie Daggett, City Attorney

SUBJECT

Public Hearing and Second Reading of Ordinance No. 052, 2017, Amending Chapter 19 of the Code of the City of Fort Collins to Adopt the Colorado Rules of Civil Procedure to Govern the Procedures for Civil Actions Filed in Municipal Court and to Add City Code Section 1-24 to Clarify that Civil Actions Arising Under the City's Ordinances are not Intended to Create by Implication Claims for Monetary Damages for the Benefit of Third Parties.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 28, 2017, adopts for Municipal Court the Colorado Rules of Civil Procedure to be used to govern the procedures for civil actions filed in Municipal Court that do not arise from violations of the City Charter or Code.

Three recitals have been added to this Ordinance between First and Second Reading to reflect the publication of the notice of public hearing required in Article II, Section 7 of the City Charter. Such publication is required when a code of laws, like the Colorado Rules of Civil Procedure, is being adopted by reference into the City Code. The published Notice of Public Hearing has also been attached as Exhibit "A" to the Ordinance.

Sections 3 and 4 of the Ordinance have also been amended to clarify that the Municipal Court civil actions to which the Colorado Rules of Civil Procedure will be applicable will not include any actions for violations, offenses or infractions of City ordinances. The Ordinance already provides that these new procedural rules are not applicable to actions for violations, offenses and infractions under the City Charter and Code.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, March 28, 2017 (w/o attachments) (PDF)

AGENDA ITEM SUMMARY

March 28, 2017

City Council

STAFF

Judge Kathleen M. Lane, Municipal Judge
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SUBJECT

First Reading of Ordinance No. 052, 2017, Amending Chapter 19 of the Code of the City of Fort Collins to Adopt the Colorado Rules of Civil Procedure to Govern the Procedures for Civil Actions Filed in Municipal Court and to Add City Code Section 1-24 to Clarify that Civil Actions Arising Under the City's Ordinances are not Intended to Create by Implication Claims for Monetary Damages for the Benefit of Third Parties.

EXECUTIVE SUMMARY

The purpose of this item is to adopt for Municipal Court the Colorado Rules of Civil Procedure to be used to govern the procedures for civil actions filed in Municipal Court that do not arise from violations of the City Charter or Code.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

As a home rule municipality, the City is granted in Article XX, Section 6.c. of the Colorado Constitution the home rule power to create a municipal court and to define and regulate its "jurisdiction, powers and duties". In City Charter Article VII, Section 1, the City has created its Municipal Court and vested it "with original jurisdiction of all causes arising under the City's Charter and ordinances," and further provides that the Court's "[r]ules of procedure . . . shall be enacted by the Council upon recommendation of the Municipal Judge".

The City Council has previously adopted in Code Section 19-3 the "Colorado Municipal Court Rules of Procedure" promulgated by the Colorado Supreme Court, which govern the procedures in municipal courts in "municipal charter and ordinance violation cases," and Council has also adopted various other rules of procedure in Chapter 19, all related to governing the procedures in Municipal Court for the City's prosecution of misdemeanor, traffic, parking and civil violations, offenses and infractions under the City Charter, Code and ordinances (collectively "Current Rules of Procedure"). In granting the Municipal Court "original jurisdiction of all causes arising under the City's Charter and ordinances," the Court also has jurisdiction over causes arising under the City Code that are unrelated to violations of the Charter or Code, for example this can include jurisdiction to consider civil actions filed with the Municipal Court to challenge quasi-judicial decisions made by City Council and other City officials.

The Current Rules of Procedure do not provide the necessary rules of procedure needed by the Municipal Court to adequately, properly and expeditiously consider a civil action filed with it that does not involve a violation of the Charter or Code and needed by the litigants in that civil action to guide them in presenting their cases to the Court. The rules of procedure that would provide such adequate, proper and expeditious procedures for the Municipal Court and the needed guidance to litigants are found in the Colorado Rules of Civil Procedure adopted by the Colorado Supreme Court to govern the procedures in all civil actions filed in Colorado's district courts. Pursuant to Charter Article VII, Section 1, Municipal Judge Kathleen Lane has

recommended to the Council that it adopt the Colorado Rules of Civil Procedure for the Municipal Court to use, as applicable, to govern the procedures for civil actions filed with it.

A civil action has recently been filed in Municipal Court to challenge a quasi-judicial decision Council rendered in February denying an appeal from a decision of the Planning and Zoning Board granting a land use application, so this Ordinance's adoption of the Colorado Rules of Civil Procedures is being made retroactive to January 1, 2017, so this newly filed civil action can proceed under these rules.

This Ordinance also adds a Section 1-24 to the Code to clarify that with respect to those civil actions filed in Municipal Court over which it has jurisdiction, that the provisions of the Code are not intended to create by implication for the benefit of any person not the City, a cause of action for monetary damages or amounts unless made expressly clear in such provisions.

COPY

ORDINANCE NO. 052, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 19 OF THE CODE OF THE CITY OF FORT COLLINS
TO ADOPT THE COLORADO RULES OF CIVIL PROCEDURE TO GOVERN
THE PROCEDURES AND TO ADD CITY CODE SECTION 1-24 TO CLARIFY
THAT CIVIL ACTIONS ARISING UNDER THE CITY'S ORDINANCES ARE NOT
INTENDED TO CREATE BY IMPLICATION CLAIMS FOR MONETARY
DAMAGES FOR THE BENEFIT OF THIRD PARTIES

WHEREAS, as a home rule municipality, the City is granted in Article XX, Section 6.c. of the Colorado Constitution the home rule power to create a municipal court and to define and regulate its "jurisdiction, powers and duties"; and

WHEREAS, in City Charter Article VII, Section 1, the City has created its Municipal Court and vested it "with original jurisdiction of all causes arising under the City's Charter and ordinances," and further provides that the Court's "[r]ules of procedure . . . shall be enacted by the Council upon recommendation of the Municipal Judge"; and

WHEREAS, the City Council has previously adopted in Code Section 19-3 the "Colorado Municipal Court Rules of Procedure" promulgated by the Colorado Supreme Court, which govern the procedures in municipal courts in "municipal charter and ordinance violation cases," and Council has also adopted various other rules of procedure in Chapter 19, all related to governing the procedures in Municipal Court for the City's prosecution of misdemeanor, traffic, parking and civil violations, offenses and infractions under the City Charter, Code and ordinances (collectively "Current Rules of Procedure"); and

WHEREAS, in granting the Municipal Court "original jurisdiction of all causes arising under the City's Charter and ordinances," the Court also has jurisdiction over causes arising under the City Code that are unrelated to violations of the Charter or Code, for example this can include jurisdiction to consider civil actions filed with the Municipal Court to challenge quasi-judicial decisions made by City Council and other City officials; and

WHEREAS, the Current Rules of Procedure do not provide the necessary rules of procedure needed by the Municipal Court to adequately, properly and expeditiously consider a civil action filed with it that does not involve a violation of the Charter or Code and needed by the litigants in that civil action to guide them in presenting their cases to the Court; and

WHEREAS, the rules of procedure that would provide such adequate, proper and expeditious procedures for the Municipal Court and the needed guidance to litigants are found in the Colorado Rules of Civil Procedure adopted by the Colorado Supreme Court to govern the procedures in all civil actions filed in Colorado's district courts: and

WHEREAS, pursuant to Charter Article VII, Section 1, Municipal Judge Kathleen Lane has recommended to the Council that it adopt the Colorado Rules of Civil Procedure for the Municipal Court to use, as applicable, to govern the procedures for civil actions filed with it; and

WHEREAS, a civil action has recently been filed in Municipal Court to challenge a quasi-judicial decision Council rendered in February denying an appeal from a decision of the Planning and Zoning Board granting a land use application, so this Ordinance's adoption of the Colorado Rules of Civil Procedures is necessary to allow this newly filed civil action to proceed under these rules; and

WHEREAS, this Ordinance also adds a Section 1-24 to the Code to clarify that with respect to those civil actions filed in Municipal Court over which it has jurisdiction, that the provisions of the Code are not intended to create by implication for the benefit of any person not the City, a cause of action for monetary damages or amounts unless made expressly clear in such provisions; and

WHEREAS, pursuant to the City Charter Article II, Section 7, City Council may enact any ordinance which adopts a code by reference in whole or in part provided that before adoption of such ordinance the Council hold a public hearing thereon and that notice of the hearing is published twice in a newspaper of general circulation published in the City, with one of such publications occurring at least eight (8) days preceding the hearing and the other publication occurring at least fifteen (15) days preceding the hearing; and

WHEREAS, in compliance with Article II, Section 7, the City Clerk published in the Fort Collins *Coloradoan* such notice of hearing concerning adoption of the Colorado Rules of Civil Procedure on April 2, 2017, and April 9, 2017,; and

WHEREAS, attached as Exhibit "A" and incorporated herein by reference is the Notice of Public Hearing dated April 2, 2017, that was so published and which the Council hereby finds meets the requirements of Article II, Section 7 of the City Charter.

WHEREAS, the City Council hereby finds and determines, in the exercise of the City's home rule authority, that adoption of this Ordinance is necessary for the just, orderly and expeditious resolution of civil actions filed in Municipal Court.

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 Chapter 1 of the Code of the City of Fort Collins is hereby amended by the addition of a new Section 1-24 which reads in its entirety as follows:

Sec. 1-24. - No implied civil causes of action for damages.

The provisions of this Code and other City ordinances are not intended to create by implication for the benefit of any person not the City any civil cause of action, right of action, chose in action or any other kind of civil action or legal claim of liability for monetary damages or amounts.

Any such civil action or legal claim for monetary damages or amounts created in this Code or any City ordinance must be expressly stated and clearly intended in the Code provision creating it.

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

Sec. 19-3. - Rules of procedure.

(a) The Colorado Municipal Court Rules of Procedure, as amended, the rules for traffic infractions contained in Article IV of this Chapter, the provisions of this Chapter, and the procedures adopted by the Municipal Judge which are not inconsistent therewith, **are adopted herein by reference and** shall govern the procedures in the Municipal Court in all cases arising from misdemeanor, traffic, parking and civil violations, offenses and infractions under the Charter, ~~and Code~~ **and City ordinances**.

(b) The Colorado Rules of Civil Procedure, as amended, shall govern the procedures in Municipal Court in all civil actions for a cause arising under the Charter, ~~or Code~~ **and City ordinances** and as needed for the Municipal Court to determine whether it has jurisdiction over a cause in a civil action, but not for actions for violations, offenses and infractions of the Charter, ~~or Code~~ **and City ordinances** which are to be governed by the procedures established in Subsection (a) of this Section. References to the district court in the Colorado Rules of Civil Procedure shall be deemed to refer to the Municipal Court. In addition, the Municipal Court shall liberally construe, administer and apply these rules as applicable in each civil action to secure the just, speedy and inexpensive determination of that civil action. In these civil actions, the Municipal Court shall be vested with the full authority to provide civil remedies, including, without limitation, equitable, injunctive and declaratory relief and to award costs and attorney fees to the full extent permitted by law. It shall also have the power in those actions to compel the attendance of witnesses, to punish for contempt of court and to enforce any award of equitable, declaratory or injunctive relief through its contempt power in accordance with the applicable provisions of the Colorado Rules of Civil Procedure, as amended.

Section 4. That the rules of procedure adopted in Code Section 19-3(b) of this Ordinance shall be applicable **as of the effective date of this Ordinance with respect to all civil actions in Municipal Court as of the effective date of this Ordinance not arising from violations of the City's Charter, Code or ordinances.**

Introduced, considered favorably on first reading, and ordered published this 28th day of March, A.D. 2017, and to be presented for final passage on the 18th day of April, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 18th day of April, A.D. 2017.

Mayor

ATTEST:

City Clerk

NOTICE OF PUBLIC HEARING

NOTICE is hereby given of a public hearing to be held before the City Council of the City of Fort Collins, Colorado, on the 18th day of April, A.D., 2017 at 6:00 p.m., or as soon thereafter as the matter may come on for hearing, in the Council Chambers at the City Hall, 300 LaPorte Avenue, Fort Collins, Colorado for the purpose of considering the adoption of an ordinance adopting by reference the *Colorado Rules of Civil Procedure* promulgated by the Colorado Supreme Court, located at 2 East 14th Avenue, Denver, Colorado 80203.

Not less than one (1) copy of said Code has been, and now is on file in the Fort Collins City Attorney's Office and one copy is on file in the Office of the City Clerk of the City of Fort Collins and is available for public inspection.

The purpose of the adoption of the Colorado Rules of Civil Procedure by said ordinance is to provide the rules of procedure that will govern those civil actions filed in the Fort Collins Municipal Court that do not involve the prosecution of violations of the City Charter or ordinance.

This notice is given and published by order of the City of Fort Collins, Colorado.

The City of Fort Collins will make reasonable accommodations for access to City services, programs and activities and will make special communication arrangements for persons with disabilities. Please call 221-6515 (V/TDD: Dial 711 for Relay Colorado) for assistance.

Dated at Fort Collins, Colorado this 2nd day of April, A.D. 2017.

Wanda Winkelmann
City Clerk