

AGENDA ITEM SUMMARY

August 8, 2017

City Council

STAFF

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

SUBJECT

Items Relating to a Proposed Charter Amendment Regarding Municipal Court Functions.

EXECUTIVE SUMMARY

- A. Possible Public Hearing and Motions Regarding Protest(s) of Ballot Language.
- B. First Reading of Ordinance No. 102, 2017, Submitting to a Vote of the Electors of the City of Fort Collins a Proposed Amendment to Section 1 of Article VII of the City Charter Pertaining to the Jurisdiction of the Municipal Court to Hear Civil Cases.

This item sets a ballot question that would modify the jurisdiction of Municipal Court to eliminate the Municipal Court's jurisdiction over civil cases while retaining the Court's jurisdiction to hear and try all proceedings initiated by the City alleging violations of the Charter and ordinances of the City. The Ordinance submits the question to Fort Collins voters at the November 7, 2017, Special Municipal Election. The Charter Amendment has been proposed in order to prevent future appeals to Municipal Court of civil actions that are more appropriately heard in Larimer County District Court and that the Municipal Court is not well situated to hear.

Any protest of the proposed ballot language must be received no later than Monday, August 7, 2017, at noon. The protest(s) shall be heard, considered, and resolved by Council prior to adoption of Ordinance No. 102, 2017. If protest(s) are received, copies will be included in Council's "Read-before" packet.

STAFF RECOMMENDATION

The City Manager, City Attorney and Municipal Judge recommend adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Article VII, Section 1 of the City Charter provides that there shall be a Municipal Court *vested with original jurisdiction of all causes arising under the City's Charter and ordinances*. This means that the Municipal Court has jurisdiction to hear cases other than criminal offenses, traffic or civil infractions or other enforcement of Code violations. Prior to 1989, the City Charter gave the Municipal Court "exclusive jurisdiction" over these matters, meaning that other courts, such as the Larimer County District Court, were arguably precluded from hearing those cases. This provision of the City Charter was changed in 1989 to eliminate the reference to Municipal Court's jurisdiction over matters arising under the City Charter and Code as "exclusive," "thereby clarifying that City Ordinances can create civil remedies in other courts of competent jurisdiction" (Ordinance No. 5, 1989).

The Fort Collins Municipal Court's caseload has traditionally included violations of the City Code, including codes adopted therein such as the City's Traffic Code and uniform codes. Most of the caseload is traffic-related and the majority of those cases are decriminalized traffic infractions. The balance of the caseload is non-traffic misdemeanors and civil infractions. Though there are some differences in rights and options based

on the nature of the charge, the process relating to all defendants is governed by the Colorado Municipal Court Rules of Procedures and state statutes applicable to Municipal Courts, as well as City Code and Charter provisions.

In April, the Council adopted Ordinance No. 052, 2017, adopting Rules of Civil Procedure for the Municipal Court. The need for these rules was precipitated by the first-ever filing in Municipal Court of a civil case, which case seeks review of a City Council land use decision. In the past, plaintiffs have sought judicial review of these types of decisions in Larimer County District Court under Rule 106 of the Colorado Rules of Civil Procedure.

Civil cases, such as the civil case now pending in Municipal Court, involve an entirely different process governed by an extensive set of procedural rules relating to civil cases. The Fort Collins Municipal Court is not staffed, in terms of judicial or administrative positions, to handle complex civil cases such as this. Instead, such cases have in the past been filed by plaintiffs in Larimer County District Court as actions under Rule 106 of the Colorado Rules of Civil Procedure. In that way, such cases are handled by judges who regularly hear these kinds of cases. The District Court has been the path chosen for review of City decisions in all cases other than the one pending currently, and the review of this case would continue in Municipal Court even if the almost never-used option of Municipal Court review for these civil cases is eliminated.

Municipal Court does not have the capacity to handle civil cases in addition to its existing caseload. Budgeting for additional staff for such cases would be difficult since they are rare but very time-intensive when filed. Also hearing these civil cases in Municipal Court places Municipal Judges hired, evaluated, and reappointed by City Council in the position of reviewing City Council decisions which may give the appearance of a conflict of interest for the Judge. Referring such cases to Municipal Judges from other jurisdictions under an intergovernmental agreement for judicial services imposes an unfair burden on the other city's resources and is not a realistic, long-term option. Revising the City's Charter to clearly remove this jurisdiction from the Municipal Court - so that such cases would instead be filed in Larimer County District Court - is the preferred option.

The use of Municipal Court for review of City land use and other types of decisions and actions is proving problematic. There are challenges in having the City's own court review the City's decisions, and there is a risk of abuse by plaintiffs that could result in substantial delays and expense in these civil cases for little gain. Review in District Court would continue to be available and this has been the course of review in all cases other than the currently pending civil case in Municipal Court. Although there has been only one case filed to date seeking review of a civil claim by Municipal Court, there is potential for abuse of the Municipal Court process that creates a significant potential burden for little gain in light of the fully adequate and appropriate review already available in Larimer County District Court.

While a few jurisdictions have adopted civil court rules for use in these kinds of civil cases (as the City did in April), others have modified their charters to eliminate their municipal court's jurisdiction over civil matters and to limit their court's jurisdiction to just hearing the prosecution of violations of the municipality's charter and ordinances.

Based on the information available from other municipalities, including Denver, Aurora and Broomfield, many of these cities' charters grant their municipal courts broad jurisdiction similar to that granted to Fort Collins' Municipal Court. However, their recent experience has been that few, if any, civil actions have been filed by citizen plaintiffs in their courts, so they have not had to address this problem.

The proposed Charter amendment language is as follows:

Article VII.

Municipal Court

Section 1. Municipal court.

~~There shall be a Municipal Court vested with original jurisdiction of all causes arising under the City's Charter and ordinances.~~ **There shall be a Municipal Court with the jurisdiction to hear and try all proceedings initiated by the City alleging violations of the Charter and ordinances of the City.** The Council shall appoint the judge or judges of Municipal Court for two (2) year terms. Council shall designate a Chief Judge to carry out related duties as adopted by the Council by ordinance, and shall fix the compensation of the Municipal Judges. Such compensation shall in no manner be contingent upon the amount of fees, fines or costs imposed or collected. Each Municipal Judge shall be licensed to practice law in the State of Colorado during his or her tenure in office, but need not be so licensed prior to appointment. As Council determines necessary, the Council may designate one (1) or more reputable and qualified attorneys to serve as temporary judge. The Council may remove a Municipal Judge for cause.

Rules of procedure, costs and fees shall be enacted by the Council upon recommendation of the Chief Municipal Judge.

PUBLIC OUTREACH

Staff distributed and posted a news release and an FAQ document regarding the proposed Charter change. This information was also provided to the Home Builders Associations and was posted at the Development Review counter.

ORDINANCE NO. 102, 2017
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF
THE CITY OF FORT COLLINS A PROPOSED AMENDMENT TO
SECTION 1 OF ARTICLE VII OF THE CITY CHARTER PERTAINING
TO THE JURISDICTION OF MUNICIPAL COURT TO HEAR CIVIL CASES

WHEREAS, Article IV, Section 8 of the Charter of the City of Fort Collins (“Charter”) provides that the Charter may be amended as provided by the laws of the State of Colorado; and

WHEREAS, as provided in Article XX, Section 9 of the Colorado Constitution and Section 31-2-210(1)(b), Colorado Revised Statutes, Charter amendments may be initiated by the City Council’s adoption of an ordinance submitting a proposed amendment to a vote of the City’s registered electors and Council must adopt in that ordinance a ballot title for the amendment; and

WHEREAS, the Council has determined that the Municipal Court is not well situated to hear civil cases in addition to the City Charter and City ordinance violations that have traditionally been heard there; and

WHEREAS, historically such civil cases have been filed not in Municipal Court but in Larimer County District Court, with one recent exception, and the District Court is an appropriate and practical forum for review of these cases; and

WHEREAS, the right of persons to seek redress and review in Larimer County District Court will continue unimpeded with the amendment of the Charter as proposed.

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 following proposed changes to Section 1 of Article VII of the City Charter shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 2” at the special municipal election to be held on November 7, 2017:

**ARTICLE VII.
MUNICIPAL COURT**

Section 1. Municipal court.

~~There shall be a Municipal Court vested with original jurisdiction of all causes arising under the City's Charter and ordinances.~~ There shall be a Municipal Court with the jurisdiction to hear and try all proceedings initiated by the City alleging violations of the

Charter and ordinances of the City. The Council shall appoint the judge or judges of Municipal Court for two (2) year terms. Council shall designate a Chief Judge to carry out related duties as adopted by the Council by ordinance, and shall fix the compensation of the Municipal Judges. Such compensation shall in no manner be contingent upon the amount of fees, fines or costs imposed or collected. Each Municipal Judge shall be licensed to practice law in the State of Colorado during his or her tenure in office, but need not be so licensed prior to appointment. As Council determines necessary, the Council may designate one (1) or more reputable and qualified attorneys to serve as temporary judge. The Council may remove a Municipal Judge for cause.

Rules of procedure, costs and fees shall be enacted by the Council upon recommendation of the Chief Municipal Judge.

Section 3. That the following ballot title, with its title and submission clause, is hereby adopted for submitting Proposed Charter Amendment No. 2 to the voters at said election:

CITY-INITIATED
PROPOSED CHARTER AMENDMENT NO. 2
AMENDING SECTION 1 OF CHARTER ARTICLE VII TO
MODIFY THE MUNICIPAL COURT’S JURISDICTION

Shall Section 1 of Article VII of the Charter of the City of Fort Collins, pertaining to Municipal Court, be amended to eliminate the Municipal Court’s jurisdiction over civil cases while retaining the Court’s jurisdiction to hear and try all proceedings initiated by the City alleging violations of the Charter and ordinances of the City?

_____Yes/For
_____No/Against

Introduced, considered favorably on first reading, and ordered published this 8th day of August, A.D. 2017, and to be presented for final passage on the 15th day of August, A.D. 2017.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 15th day of August, A.D. 2017.

Mayor

ATTEST:

Interim City Clerk