

# AGENDA ITEM SUMMARY

January 21, 2020

City Council

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## STAFF

Keith Hanson, Real Estate Manager  
Ingrid Decker, Legal

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## SUBJECT

Second Reading of Ordinance No. 012, 2020, Amending Section 23-113 of the Code of the City of Fort Collins to Authorize the City Manager to Approve Subleases of City Property.

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## EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on January 7, 2020, amends Section 23-113 of City Code to authorize the City Manager, or his or her designee, to provide written consent, at his or her sole discretion, to a tenant of City-owned property to sublease all or a portion of the property for a definite term of five years or less where the original lease was approved by the City Council and the terms of such lease do not restrict, condition or prohibit subleasing.

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## STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

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## BACKGROUND / DISCUSSION

At First Reading on January 7, 2020, Council requested that staff provide an actual or hypothetical example that supported the proposed Code amendment.

This proposed Code amendment was triggered by a sublease request by a Teaching Tree, a tenant of the City's property at 424 Pine Street. City Council approved Teaching Tree's lease of the 424 Pine St. building in 2018 by ordinance, because their lease is for up to 40 years. The ordinance did not address the possibility of subleasing, though the lease says it can sublease, with the City's permission.

When City staff know in advance that a tenant plans to sublease space, staff will specifically address that in any Council ordinance or resolution authorizing the lease. For example, when City Council authorized the lease of the Power Plant property on North College to the Colorado State University Research Foundation (CSURF) in 2011, the ordinance specifically authorized CSURF to sublease the premises or portions of the premises in accordance with the terms of its lease agreement.

In June 2019, Teaching Tree requested permission to sublease a portion of its space on a very short turnaround that did not allow time to go to City Council to request permission to sublease. Based on the City Manager's authority under the City Code to enter into leases for up to five years, staff, in consultation with the City Attorney's Office, concluded that the City Manager could authorize a sublease for up to five years; all agreed, however, that it would be helpful if the City Code clearly authorized that authority when it is not previously addressed in a Council resolution or ordinance.

**ATTACHMENTS**

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1. First Reading Agenda Item Summary, January 7, 2020 (w/o attachments) (PDF)
2. Ordinance No. 012, 2020 (PDF)

# AGENDA ITEM SUMMARY

City Council

January 7, 2020

## STAFF

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Keith Hanson, Real Estate Manager  
Ingrid Decker, Legal

## SUBJECT

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First Reading of Ordinance No. 012, 2020, Amending Section 23-113 of the Code of the City of Fort Collins to Authorize the City Manager to Approve Subleases of City Property.

## EXECUTIVE SUMMARY

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The purpose of this item is to amend Section 23-113 of City Code to authorize the City Manager, or his or her designee, to provide written consent, at his or her sole discretion, to a tenant of City-owned property to sublease all or a portion of the property for a definite term of five years or less where the original lease was approved by the City Council and the terms of such lease do not restrict, condition or prohibit subleasing.

## STAFF RECOMMENDATION

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Staff recommends adoption of the Ordinance on First Reading.

## BACKGROUND / DISCUSSION

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Section 23-113 of the City Code authorizes the City Council to lease any and all interests in real property owned by the City and authorizes the City Manager to lease City-owned real property for a definite term of five years or less. Instances have occurred where a tenant leasing property from the City for more than five years, in accordance with an ordinance or resolution approved by the City Council, will ask to sublease all or a portion of that property to a subtenant. Leases typically provide a tenant the right to sublease to a subtenant with the consent of the landlord. The City Code does not currently address whether the City Manager may approve a sublease of City property.

City staff recommends that Section 23-113 of the City Code be amended to state that if the City Council has approved a lease by resolution or ordinance, it will create a presumption that the tenant may sublease all or a portion of the property for a term of five years or less, with the approval of the City Manager, or someone the City Manager may delegate that authority to, such as the Operation Services Director, unless the terms of the tenant's lease restrict, condition or prohibit subleasing. This proposed Code amendment will provide for the expedition of consent in an administrative manner, which will reduce the cost and time spent for staff to prepare a specific request for City Council consideration. Authorizing the City Manager to approve subleases for a term of five years or less is consistent with the City Manager's authorization to approve initial leases for a term of five years or less, and to approve licenses to enter for a term of five years or less.

## CITY FINANCIAL IMPACTS

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The proposed amendment to the Code would not result in any direct costs to the City and would reduce the amount of time staff will need to administer City Manager consent for future sublease requests.

ORDINANCE NO. 012, 2020  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING SECTION 23-113 OF THE CODE OF THE CITY  
OF FORT COLLINS TO AUTHORIZE THE CITY MANAGER  
TO APPROVE SUBLEASES OF CITY PROPERTY

WHEREAS, Section 23-113 of the City Code authorizes the City Council to lease any and all interests in real property owned by the City, and authorizes the City Manager to lease interests in real property owned by the City for a definite term of five years or less; and

WHEREAS, sometimes a tenant leasing property from the City in accordance with an ordinance or resolution approved by the City Council will ask to sublease all or a portion of that property to a subtenant; and

WHEREAS, the City Code does not currently address whether the City Manager may approve a sublease on City property if the City Council did not specifically grant the tenant the right to sublease in the ordinance or resolution approving the lease; and

WHEREAS, City staff is recommending that the City Council amend Section 23-113 of the City Code to state that if the City Council has approved a lease it creates a presumption that the tenant may sublease all or a portion of the property for a term of five years or less, with the approval of the City Manager or whoever the City Manager may designate, such as the Operation Services Director, unless the terms of the tenant's lease restrict, condition or prohibit subleasing; and

WHEREAS, the City Council finds that such an amendment is in the best interests of the City and its citizens.

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 Section 23-113 of the Code of the City of Fort Collins is hereby amended by the addition of a new subsection (c) to read as follows:

**Sec. 23-113. - Leases.**

...

(c) A lease approved by the City Council pursuant to this Section or § 23-111 is presumed to include the right of the tenant to sublease all or a portion of the leased property for a definite term of five (5) years or less with the written consent, and in the sole discretion, of the City Manager or

the City Manager's designee, unless the terms of such lease further restrict, condition or prohibit subleasing.

Introduced, considered favorably on first reading, and ordered published this 7th day of January, A.D. 2020, and to be presented for final passage on the 21st day of January, A.D. 2020.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading on the 21st day of January, A.D. 2020.

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Mayor

ATTEST:

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City Clerk