

AGENDA ITEM SUMMARY

February 4, 2020

City Council

STAFF

Judge Kathleen M. Lane, Chief Judge
Ingrid Decker, Legal

SUBJECT

First Reading of Ordinance No. 022, 2020, Amending Chapter 19 of the Code of the City of Fort Collins Regarding Municipal Court.

EXECUTIVE SUMMARY

The purpose of this item is to make various updates to Chapter 19 of the City Code, which governs Municipal Court procedures, to bring the City Code into alignment with current Court practices and legal requirements.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Chapter 19 of the City Code governs procedures for criminal and civil cases in Municipal Court. In 2019 the City Attorney's Office and Municipal Court staff began a review of Chapter 19 to determine whether it needed any updates to bring it into alignment with current legal standards or preferred Court practices. Based on that review, staff is recommending amendments to Chapter 19 that would accomplish the following:

- Update references to the Judge to reflect the 2017 amendment to the City Charter creating the title of "Chief Judge"
- Delete references to person's being imprisoned for failing to pay fines, as this is no longer accepted practice
- Other minor changes that reflect the Municipal Court's preferred practices.

A proposed addition to Section 19-3(b) would clarify that the Court's adoption of the Colorado Rules of Civil Procedure is not meant to create any new civil causes of action in Municipal Court. This change is based on the experience of the Temporary Judge who handles civil cases filed in Municipal Court and has found that without this limiting language parties to these cases try to utilize procedures that are not appropriate to this discrete class of cases.

CITY FINANCIAL IMPACTS

The recommended changes will not result in any impacts to the City's financial resources.

ORDINANCE NO. 022, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 19 OF THE CODE OF THE CITY
OF FORT COLLINS REGARDING MUNICIPAL COURT

WHEREAS, Chapter 19 of the City Code governs procedures for criminal and civil cases in Municipal Court; and

WHEREAS, many provisions in Chapter 19 have not been updated in over a decade; and

WHEREAS, in 2019 Municipal Court staff and the City Attorney’s Office began a systematic review of Chapter 19 to determine whether any amendments are needed to bring the City Code into alignment with current Court practices and legal requirements; and

WHEREAS, based on that review, City staff is recommending the following changes:

- Updates to reflect the 2017 amendment to the City Charter creating the title of “Chief Judge”;
- Clarification that the Court’s adoption of the Colorado Rules of Civil Procedure is not meant to create any new civil causes of action in Municipal Court;
- Deletion of references to a person’s being imprisoned for failing to pay fines, as this is no longer accepted practice, and the Court does not do so; and
- Other minor changes that reflect the Municipal Court’s preferred practice; and

WHEREAS, the City Council finds that the proposed changes are in the best interest 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 the definition of “*Municipal Judge*” in Section 19-1 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-1. - Definitions.

...

Municipal Judge shall mean and include the ~~presiding Municipal~~ Chief Judge, and all Assistant Municipal Judge(s), and Temporary Judge(s), unless the context requires otherwise.

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.

...

(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, 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, 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. **This Section is not intended to create any new causes of action in the Municipal Court, nor to provide procedures or relief beyond those contemplated by Rule 106(a)(4) of the Colorado Rules of Civil Procedure to actions undertaken strictly within the sphere of matters that are of the City's local or municipal concern.**

Section 4. That Section 19-4 of the Code of the City of Fort Collins is hereby amended by deleting it in its entirety.

~~Sec. 19-4. - Failure to pay fine or penalty.~~

~~(a) Any person against whom a fine or penalty is assessed by the Municipal Court for a violation of a misdemeanor offense who refuses or neglects to pay the fine or penalty or who violates any condition placed thereon by the Municipal Judge may be imprisoned for such refusal, neglect or violation.~~

~~(b) A person imprisoned for refusing or neglecting to pay such fine or penalty shall be credited at a rate established by the Municipal Judge in the Municipal Court Schedule of Fines.~~

Section 5. That Section 19-5 of the Code of the City of Fort Collins is hereby renumbered as Section 19-4 and amended to read as follows:

Sec. 19-54. - Contempt of court.

...

(c) *Out of presence of Court.* When it appears to the Municipal Court by motion supported by affidavit that a contempt has been committed out of the presence of the Municipal Court, the

Municipal Court may *ex parte* order a citation to issue to the person so charged to appear and show cause at a time designated why he or she should not be punished for contempt. The citation and a copy of the motion and affidavit shall be served upon such person within a reasonable time before the time designated. If such person fails to appear at the time so designated, or if the Municipal Court so orders when the citation is issued or thereafter, a warrant for his or her arrest may be issued. Such warrant shall fix the time for the production of such person in Court. The Municipal Court shall direct by endorsement thereon the amount of the bail required. If such person is arrested under the warrant issued by the Municipal Court, makes bond and fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the bond may be forfeited, and the amount thereof, to the extent of the damages suffered by the contempt, shall be paid to the person damaged thereby, which person may include the Municipal Court but shall not include the Municipal Judge of the Municipal Court. If the person arrested fails to make bond, he or she shall be kept in custody, subject to the order of the Municipal Court. The Municipal Court shall hear the evidence for and against the person charged, and it may find him or her guilty of contempt and by order prescribe the punishment therefor. A fine may be imposed not exceeding the damages suffered by the contempt, plus costs of the contempt proceeding, plus reasonable attorney's fees in connection with the contempt proceeding, payable to the person damaged thereby, which person may include the Municipal Court but shall not include the Municipal Judge of the Municipal Court. If the contempt consists of the failure to perform an act in the power of the person to perform, he or she may be imprisoned until its performance. In addition thereto, to vindicate the dignity of the Municipal Court, if the citation so states, a fine or imprisonment may be imposed. ~~If any such fine is not paid, the Municipal Court may order the contemnor imprisoned until payment thereof, in accordance with § 19-4 of this Code.~~

Section 6. That Section 19-36 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-36. - Creation; jurisdiction; qualifications.

(a) The ~~Municipal~~ **Chief** Judge is authorized and empowered to appoint one (1) or more Referees to hear certain municipal ordinance violations relating to parking or Municipal Code violations designated as civil infractions, and to review any costs of abatement or removal assessed pursuant to civil infraction provisions of this Code, as the ~~Municipal~~ **Chief** Judge may from time to time designate. Such alleged violations may include any offense or infraction which may now or in the future be included in the schedule of payable fines established by the ~~Municipal~~ **Chief** Judge pursuant to law except any offense which might result in the assessment of points by the State Department of Revenue against the responsible party's driving license or privilege.

...

(c) ~~A Referee appointed by the Municipal Judge~~ **The Chief Judge shall appoint a Referee** to hear civil infractions ~~shall be appointed~~ from a list of candidates chosen by a staff committee representing each of the following: **Municipal Court**, Neighborhood Services, **and** the City Attorney's Office ~~and the Human Resources Department.~~

...

Section 7. That Section 19-38 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-38. - Procedures for hearings before referee.

(a) The Referee is authorized to adopt rules and procedures governing conduct of hearings in accordance with the provisions of this Article. The ~~Municipal~~ Chief Judge shall approve all such rules and procedures prior to their adoption by the Referee.

Section 8. That Section 19-39 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-39. - Order of the referee.

...

(b) If a defendant fails to answer a citation or notice to appear before a Referee, a default judgment will enter in the amount of the civil penalty plus all costs, expenses and damages. In the event a defendant fails to pay a civil penalty, costs, damages and expenses within ~~thirty (30)~~ seven (7) days after the payment is due or fails to pay a default judgment, the City may pursue any legal means for collection and, in addition, may obtain an assessment against the property that is the subject of the violation if the Code violation is designated as a civil infraction.

Section 9. That Section 19-40 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-40. - Record of proceedings and hearings.

A written record of all proceedings shall be ~~maintained~~ made by the Referee and maintained by the Municipal Court. The record shall contain the name of the alleged responsible party, the date of the appearance before the Referee, the complaint number, the date, place and type of violation and any order of the Referee. All hearings and evidence presented at the hearing shall be recorded verbatim, by either electronic devices or stenographic means.

Section 10. That Section 19-66 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 19-66. - Payment without appearance.

(a) Except for those violations that require an appearance before the Municipal Court, the Municipal Court Clerk shall accept payment in full of the amount due for a civil infraction citation by a defendant without an appearance before the Municipal Court if payment is made after the issuance of the charging document and prior to the date and time scheduled for the first

hearing, provided that the Municipal Court Clerk has a copy of the charging document. Such payment shall be separately accounted for and deposited into the City's general fund in accordance with the rules and procedures of the Finance Department.

...

Section 11. That Section 19-69 of the Code of the City of Fort Collins is hereby amended by deleting subparagraph (d) in its entirety.

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

...

~~(d) If the defendant fails to satisfy the judgment immediately following the final hearing or within the time allowed by a reasonable extension granted upon a showing of good cause by and upon application of the defendant, then such failure shall be treated as a default.~~

Introduced, considered favorably on first reading, and ordered published this 4th day of February, A.D. 2020 and to be presented for final passage on the 18th day of February, A.D. 2020.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 18th day of February, A.D. 2020.

Mayor

ATTEST:

City Clerk