

AGENDA ITEM SUMMARY

February 4, 2020

City Council

STAFF

Mike Calhoon, Director of Parks
Jill Hueser, Legal

SUBJECT

Items Relating to Updating Certain Minor Code Violations and Related Penalties.

EXECUTIVE SUMMARY

- A. First Reading of Ordinance No. 023, 2020, Amending the Code of the City of Fort Collins to Reclassify Certain Offenses as Petty Offenses and Update the Potential Monetary Penalty for Code Violations.
- B. First Reading of Ordinance No. 024, 2020, Amending Section 17-102 of the Code of the City of Fort Collins Regarding the Offense of Throwing Missiles.

The purpose of this item is to reclassify some misdemeanors as petty offenses, update and simplify the maximum possible fine for all types of offenses and amend the throwing missiles offense to reflect behavior that threatens safety and not simply any throwing of anything.

STAFF RECOMMENDATION

Staff recommends adoption of both Ordinances on First Reading.

BACKGROUND / DISCUSSION

Under current Code provisions, the City can classify a Code violation as a misdemeanor, a petty offense or a civil infraction. City Council created the petty offense classification in 2017 and at that time it was limited to smoking violations. However, Council indicated its desire that all municipal misdemeanors be reviewed to determine whether reclassification might be appropriate. Both misdemeanors and petty offenses provide benefits and are appropriate depending on the specific law being broken, as noted in the following points:

- Misdemeanor offenses constitute a criminal violation of City Code. These offenses are punishable by a maximum fine of \$3,020 and 180 days in jail. If someone does not appear for their court date or pay their fine, the City can issue a warrant for that person's arrest. These offenses are a part of an individual's criminal record and can impact people's ability to apply for and compete for jobs.
- Petty offenses are still criminal in nature but do not carry the possibility of jail time and are not required to be reported in most job applications; however, the City may still issue a warrant for a petty offense violation if a defendant does not appear for court.

Some municipal offenses currently classified as misdemeanors are minor enough in nature that they never merit a jail sentence and the long-term effect on job applications is disproportionate to the severity of the offense. Others are already classified as petty offenses at the state level (although the state has two levels of petty offenses and the higher level does carry the possibility of a jail sentence). Staff focused on identifying such violations and submitting them for possible reclassification.

Legal staff met with Parks, Natural Areas, and Police Services to get input on which offenses to reclassify. Staff recommendations from these departments weighed heavily in the final recommendations.

In addition, the Code currently provides for only a \$500 maximum fine for petty offenses but an ever-increasing (based on inflation rates) maximum fine for misdemeanors and civil infractions. This leads to two issues: first, a more serious offense (a petty offense) has a lesser possible penalty than a less serious offense (civil infraction), and second it is difficult, if not impossible, for an average individual to calculate the maximum possible fine based solely on looking at the Code. In addition, if the City Council decides to reclassify the proposed offenses, some carry a penalty on the fine schedule that is greater than \$500 (i.e., unreasonable noise). This Ordinance proposes setting the maximum fine for all types of violations near the statutorily allowed maximum. The Council could then periodically review the maximum fine amount and determine whether to increase it as allowed.

Also, while reviewing offenses to make the recommendations, staff reviewed the charge of throwing missiles. Rather than recommend its reclassification, staff is recommending its amendment. Throwing missiles at vehicles will remain a misdemeanor as it represents highly dangerous behavior. Throwing missiles otherwise will no longer be a criminal offense unless it fits within other Code provisions. For example, if an individual threw a missile and hit another person, he or she could be charged with either harassment or assault depending on whether there was injury. If an individual threw a missile at property and damaged it, that person could be charged with criminal mischief.

CITY FINANCIAL IMPACTS

If Council elects to standardize the possible maximum fines for all types of offenses, this Ordinance should have no impact on fine collection. It should also save money for the City by reducing the seriousness of some offenses, as individuals are not entitled to court-appointed counsel if jail is not a possible outcome of their case. Therefore, anyone charged with a petty offense does not get counsel paid for by the City. Overall this change should reduce City costs while having no impact on fine revenue.

ORDINANCE NO. 023, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE CODE OF THE CITY OF FORT COLLINS TO RECLASSIFY
CERTAIN OFFENSES AS PETTY OFFENSES AND UPDATE THE POTENTIAL
MONETARY PENALTY FOR CODE VIOLATIONS

WHEREAS, on December 19, 2017, the City Council adopted Ordinance No. 171, 2017, establishing a category of Code violation offenses classified as petty offenses; and

WHEREAS, certain offenses are currently classified as petty offenses under state law but misdemeanors under the Code of the City of Fort Collins; and

WHEREAS, City staff believes certain minor offenses, while appropriately classified as criminal rather than civil offenses, need not have jail as a possible penalty; and

WHEREAS, classifying these minor offenses as civil infractions is also not a satisfactory solution because the Municipal Court cannot issue warrants for failure to appear in court on civil infractions, making them harder to enforce; and

WHEREAS, these minor offenses further merit criminal classification based on their severity but are minor enough that the City would not ask for, nor would the Court impose, a jail sentence for such violations; and the impact of a lifetime misdemeanor conviction is disproportionate to the severity of the offense; and

WHEREAS, Ordinance No. 171, 2017 provided that City staff would review certain civil infractions and misdemeanors in the City Code, determine whether they ought to be reclassified, and bring before City Council for consideration any recommended reclassification; and

WHEREAS, the City Attorney's Office has consulted with City enforcement staff in several departments, including Police Services, Parks and Natural Areas, to develop a list of proposed City Code violations that could properly be reclassified as petty offenses, or charged as petty offenses for a first offense, with a second offense within twelve months classified as a misdemeanor offense; and

WHEREAS, City Code violations that staff recommends be reclassified as petty offenses include:

- Minor possession of tobacco
- Littering
- Use of parking areas
- Possession of graffiti materials by a minor
- Misuse of toxic vapors
- Certain prohibited activities within natural areas
- Certain prohibited activities within parks; and

WHEREAS, City Code violations that staff recommends be reclassified as petty offenses only for a first offense include tampering with refuse containers, and unreasonable noise; and

WHEREAS, the City Code currently sets potential maximum fines for misdemeanors and civil infractions as permitted by state statute and adjusted annually for inflation, but currently limits fines for petty offenses to five hundred dollars (\$500) with no adjustment for inflation over time; and

WHEREAS, the inflation adjustment called for in the City Code makes it hard for anyone looking at the City Code to determine what the actual maximum penalty is for misdemeanors and civil infractions; and

WHEREAS, some of the proposed reclassified offenses may merit fines in excess of five hundred dollars (\$500) under certain circumstances and in alignment with civil infraction fines; and

WHEREAS, City staff is recommending that the maximum potential fine be set at the same amount for all levels of offenses and no longer automatically adjusted for inflation, so that the actual maximum fine is clear in the City Code; and

WHEREAS, based on recent awareness of children possibly being charged with a misdemeanor for throwing snowballs at one another, staff is also proposing amending Section 17-102 of the City Code related to throwing missiles to make it apply only to throwing missiles at vehicles; and

WHEREAS, juveniles are not subject to sentence to incarceration under any circumstances based on a violation of the Code of the City of Fort Collins; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City and are necessary for the health, safety, and welfare of the City's 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 1-15 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 1-15. General penalty and surcharges for misdemeanors offenses, petty offenses, traffic offenses, and traffic and civil infractions.

(a) Except as to petty offenses, traffic infractions described in Subsection (b) below, and any civil infraction specified as such in this Code, any person who shall violate any provision of this Code, the Charter or any provision of any code or other regulation adopted by reference by this Code, by doing any act prohibited or declared to be unlawful thereby, or who shall engage in any

business, occupation or activity for which a license or permit is required without having a valid license or permit therefor, or who shall fail to do any act required by any such provision, or who shall fail to do any act when such provision declares such failure to be unlawful or to be an offense or misdemeanor, shall be guilty of a misdemeanor and, upon conviction, shall be punished by the penalty specifically provided for such violation or, if none, then by a fine not exceeding two thousand six hundred fifty dollars (\$2,650.) a fine and any surcharge, the total of which is not to exceed three thousand dollars (\$3,000), or by imprisonment not exceeding one hundred eighty (180) days, or by both such fine and imprisonment, in addition to any costs which may be assessed. No person under the age of eighteen (18) years as of the date of the offense shall be subject to imprisonment except in the case of failure to comply with a lawful order of the court, including an order to pay a fine, and then only in the manner provided in Section 13-10-113, C.R.S., and the Colorado Children's Code, Section 19-1-101 et seq., C.R.S. Each day upon which a violation continues shall constitute a separate misdemeanor offense unless some other specific time period is provided for any particular offense. ~~The maximum fine set forth above shall be adjusted for inflation on January 1 of each calendar year. For the purpose of this provision, inflation shall mean the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for Denver Boulder, all items, all urban consumers, or its successor index.~~

(b) A violation of any provision of Chapter 28, Vehicles and Traffic, in this Code or the Fort Collins Traffic Code, shall be deemed to be a traffic infraction if, at the time of the commission of the violation, its counterpart violation under the provisions of Article 4 in Title 42 of the Colorado Revised Statutes, if any, is designated by state law as being a traffic infraction. If no counterpart violation exists under state law, the violation shall be deemed to be a traffic infraction. All other violations under Chapter 28 of this Code or the Fort Collins Traffic Code shall be considered misdemeanors punishable as described in Subsection (a) above. Any person against whom judgment is entered for a traffic infraction under this Code shall be subject to the penalty of a fine and any surcharge, the total of which is not to exceed ~~two thousand six hundred fifty dollars (\$2,650.)~~ three thousand dollars (\$3,000), and shall not be subject to imprisonment on account of such judgment. ~~The maximum fine set forth above shall be adjusted for inflation on January 1 of each calendar year. For the purpose of this provision, inflation shall mean the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for Denver Boulder, all items, all urban consumers, or its successor index.~~

...

(f) Except as provided in Paragraph (4) below, any person found responsible for a violation of this Code designated as a civil infraction shall pay a civil penalty for such infraction of not more than ~~two thousand six hundred fifty dollars (\$2,650.)~~ three thousand dollars (\$3,000). Said amount shall be adjusted for inflation on January 1 of each calendar year. For the purpose of this provision, *inflation* shall mean the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, consumer price index for Denver Boulder, all items, all urban consumers, or its successor index, plus costs, damages and expenses as follows:

...

(h) Any person who shall violate any provision of this Code designated as a petty offense shall pay a penalty for such offense of ~~not more than five hundred dollars (\$500)~~. a fine and any surcharge, the total of which is not to exceed three thousand dollars (\$3,000), and shall not be subject to imprisonment on account of such judgment. Jail shall not be a possible penalty for petty offenses. The municipal court is authorized to impose a probation sentence for petty offenses. Notwithstanding the provisions of this subsection (h), the maximum fine for a violation of the Code of the City of Fort Collins Article III, Section 12 (smoking in public areas) shall be not more than five hundred dollars (\$500).

Section 3. That Section 12-20 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-20. Tampering with refuse or rubbish containers prohibited.

...

(c) Any person who violates any provision of this §12-20 shall be guilty of a petty offense punishable by a fine in accordance with §1-15(h) unless such violation is a second or subsequent violation within a twelve (12) month period. Any person who commits a second or subsequent violation of this § 12-20 within a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

Section 4. That Section 12-98 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 12-98. Minors prohibited from purchasing, possessing or using tobacco products.

...

(c) Any person who violates any part of this §12-98 is guilty of a petty offense punishable by a fine in accordance with §1-15(h).

Section 5. That Section 17-41 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 17-41. Littering

...

(d) Any person who violates any provision of this § 17-41 shall be guilty of a petty offense punishable by a fine in accordance with § 1-15(h).

Section 6. That Section 17-125 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 17-125. Use of parking areas.

(a) Those portions of College Avenue (between Magnolia Street and Maple Street) and Mountain Avenue (between Howes Street and Peterson Street) designated for parking between the curbs of said avenues shall only be used for parking purposes. Any person not remaining inside a vehicle in such parking area shall immediately leave the parking area by the safest direct route. No person shall remain outside a vehicle in such parking area.

(a) Any person who violates this § 17-125 commits a petty offense punishable by a fine in accordance with § 1-15(h).

Section 7. That Section 17-129 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 17-129 Unreasonable Noise

...

(e) Any person who violates this § 17-129 commits a petty offense punishable by a fine in accordance with §1-15(h) unless such violation is a second or subsequent violation within a twelve (12) month period. Any person who commits a second or subsequent violation of this § 17-129 within a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

Section 8. That Section 17-136 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 17-136. Possession of graffiti materials by minors prohibited.

...

(c) Any person who violates this § 17-136 commits a petty offense punishable by a fine in accordance with § 1-15(h).

Section 9. That Section 17-162 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 17-162. Use or possession as narcotic prohibited.

(a) No person shall intentionally smell or inhale the fumes of any substance releasing toxic vapors for the purpose of causing a condition of euphoria, excitement, exhilaration, stupefaction or dulled senses or nervous system, nor possess, buy or use any such substance for the purpose of violating or aiding another to violate this Section.

(b) Any person who violates this § 17-162 commits a petty offense punishable by a fine in accordance with § 1-15(h). Any person who commits a second or subsequent violation of this §

17-162 within a twelve (12) month period shall be guilty of a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

Section 10. That Section 23-193 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-193. Prohibited acts; permits.

...

(f) Any person who violates subsections (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(12), (a)(14), (a)(17), (b), (d)(2), (d)(3), (d)(5), (d)(11), (d)(12), or (d)(16) of this § 23-193 is guilty of a petty offense punishable by a fine in accordance with § 1-15(h). Any person who violates any other subsection of this § 23-193 commits a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

(g) Any person who violates subsection (a)(16) of this § 23-193 shall be guilty of the level of offense applicable to the underlying violation.

Section 11. That Section 23-203 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-203. Prohibited acts; permits.

...

(f) Any person who violates subsections (a)(3), (a)(9), (a)(10), (a)(12), (b), (d)(3), (d)(10), or (d)(11) of this § 23-203 is guilty of a petty offense punishable by a fine in accordance with § 1-15(h). Any person who violates any other subsection of this § 23-203 commits a misdemeanor punishable by a fine or jail in accordance with § 1-15(a).

(g) Any person who violates subsection (a)(15) of this § 23-203 shall be guilty of the level of offense applicable to the underlying violation.

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 the 18th day of February, A.D. 2020.

Mayor

ATTEST:

City Clerk

ORDINANCE NO. 024, 2020
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING SECTION 17-102 OF THE CODE OF THE CITY OF FORT COLLINS
REGARDING THE OFFENSE OF THROWING MISSILES

WHEREAS, Section 17-102 of the City Code currently makes it a misdemeanor offense to throw any stone, snowball, or missile at a vehicle, building, private or public property or at any person and defines a missile as any object or substance; and

WHEREAS, the current wording of the offense is overly broad, leading it to prohibit actions that do not merit criminal treatment, such as the throwing of snowballs or sports balls; and

WHEREAS, throwing missiles at vehicles causes a specific safety concern, while throwing missiles at persons or buildings is subject to prosecution under assault or criminal mischief ordinances, making it redundant to include in the separate offense of throwing missiles; and

WHEREAS, City staff is therefore recommending that throwing missiles be amended to narrow the scope of the offense to behavior that causes great risk and is not encompassed by another offense; and

WHEREAS, the City Council has determined that the proposed amendment is in the best interests of the City and is necessary for the health, safety, and welfare of the City's 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 17-102 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 17-102. Throwing of missiles.

(a) No person shall throw any stones, snowballs or missiles upon or at any vehicle, ~~building or other public or private property or upon or at any person in any public place.~~

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 the 18th day of February, A.D. 2020.

Mayor

ATTEST:

City Clerk