

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 10

DATE: January 6, 2004

STAFF: Mike Herzig

SUBJECT

First Reading of Ordinance No. 002, 2004, Amending Chapter 17 of the City Code by the Addition of a New Section 17-45 to Make it Unlawful for Any Person to Damage or Destroy Public Improvements in Public Rights-of-Way Unless Authorized or Permitted to Do So in Accordance with Law.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

FINANCIAL IMPACT

There is no direct financial impact. However, City expenditures for damage to public improvements may be reduced over time with the recovery of costs from those who cause damages.

EXECUTIVE SUMMARY

It is proposed that Chapter 17 of the City Code be modified to add language to state that no person shall do any act in the public right-of-way that will deface or cause damage to public street improvements unless they are permitted to do so in accordance with law. Along with this change the City Engineer's authority would be expanded to prevent damage to public street improvements that are caused by non-permitted contractors, suppliers and other parties causing damage to streets and related facilities by their activities. This authority would be exercised through the Engineering Construction Inspectors, who are currently sworn officials, similar to Building Inspectors. Engineering Construction Inspectors, as well as Police Officers, would then be able to enforce City Code provisions that make it unlawful to damage public improvements in the public rights-of-way.

BACKGROUND

Frequently, the City Engineer's office is faced with situations where certain work and activities done by contractors and suppliers for private construction projects damages pavement, curb, gutters, sidewalks, traffic control signs and signals, or other improvements within the public rights-of-way of the City. When the damage is caused by a developer or its contractors or suppliers, the City Engineer has recourse through the development agreement to require the developer to make repairs, cease the activities that are causing damage, or issue instructions to prevent further damage to the public street improvements.

A problem arises when other parties cause damages while doing construction or other work that is not under permit from the City Engineer's office. There is a provision in the City's Traffic Code (Sec. 512) which says that no person shall drive, operate or move upon or over any street any vehicle object or contrivance in such a manner as to cause damage, and the provision makes the violator liable for any such damage. However, there are two problems with using that Code section to address the problem that the City Engineer's Office is experiencing. First the scope of the provision is too narrow, since it covers only damage to streets, and not damage to sidewalks, stormwater facilities or other public property. Second, a violation of the Traffic Code provision is a zero-point traffic infraction, so it does not serve as a strong disincentive to those who damage property in the course of construction activity. Consequently, the situation has now reached a point that certain individuals knowingly cause damages because they believe that no one will do anything about it.

Staff estimates conservatively, that the damages amount to \$300,000 or more per year. Engineering Construction Inspectors estimate that they encounter this situation a couple of times per month, on the average.

General examples of the causes of damages are the following:

- (1) Tracked equipment turning on a paved street surface cause scuffing and gouges that lead to premature failure of the pavement.
- (2) Teeth on buckets of loaders and backhoes cause gouges in the asphalt and concrete.
- (3) Skid Steers turning sharply on the asphalt surface cause damage to the surface.

The damages become the burden of the public to pay for repairing, through taxes.

It is proposed that the City Code be modified to add language that states that no person shall do any act in the public rights-of-way that will deface or cause damage to public improvements, unless permitted to do so in accordance with law. As with other violations of the City Code, a violation of this Section would be a misdemeanor criminal offense.

As Right-Of-Way Manager for the City's 460+ miles of City streets, it is logical that the City Engineer's office be empowered, along with Police Services, to enforce this provision. It is further proposed that enforcement be performed by Engineering Construction Inspectors. Similar to Building Inspectors, the Construction Inspectors are already sworn officials that are in a position to enforce compliance on development projects and other permitted work in the public rights-of-way. If Council approves this new Code provision, the enforcement authority of the Construction Inspectors will be expanded to include this provision.

Enforcement of the proposed requirements generally consists of informing violators what is acceptable and not acceptable. Most contractors comply with instructions from City inspectors. However, the authority to issue citations needs to be there to use when necessary for situations where the damage has already occurred, or for those individuals that may refuse to comply. It is not expected that these situations will occur with great frequency. For example, sworn authority was delegated to the Engineering Construction Inspectors in 2002 to deal with development and other permitted activities. Since that time, a summons has only been issued for two cases out of several thousand situations. The fact that the inspectors have the authority to issue citations is generally enough to deter damages or to insure prompt repairs, without having to resort to judicial action.

ORDINANCE NO. 002, 2004
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 17 OF THE CODE OF THE CITY OF FORT COLLINS
BY THE ADDITION OF A NEW SECTION 17-45 TO MAKE IT
UNLAWFUL FOR ANY PERSON TO DAMAGE OR DESTROY
PUBLIC IMPROVEMENTS IN PUBLIC RIGHTS-OF-WAY UNLESS
AUTHORIZED OR PERMITTED TO DO SO IN ACCORDANCE WITH LAW

WHEREAS, the City has experienced situations where various activities performed by contractors, suppliers and other persons for private construction projects causes damage to pavement, curbs, gutters, sidewalks, traffic control signs and signals and/or other improvements within the public rights of way; and

WHEREAS, on those occasions where such damage is caused by parties who are not governed by any permit or development agreement, it is difficult for the City to prevent such damage or to receive compensation for damages already incurred; and

WHEREAS, the Council has determined that Chapter 17 of the Code of the City of Fort Collins should be amended by the addition of a new Section 17-45 to assist the staff of the City in preventing persons from causing such damage, and if such damage is caused, to assist the City in recovering the costs of repairing such damage.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Chapter 17 of the Code of the City of Fort Collins be amended by the addition of a new Section 17-45 to read as follows:

Sec. 17-45. Damage to Public Property

No person shall damage, deface or destroy any street, sidewalk, curb, gutter, traffic control sign or signal, or any other public property or equipment located within a public right-of-way, unless authorized or permitted by law. Any person convicted of violating this Section shall be responsible to the city for all costs incurred by the city in repairing such damage. The terms "public property" and "public right-of-way" as used in this Section shall have the meanings ascribed to them in § 17-42 of the Code.

Introduced and considered favorably on first reading and ordered published this 6th day of January, A.D. 2004, and to be presented for final passage on the 20th day of January, A.D. 2004.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 20th day of January, A.D. 2004.

Mayor

ATTEST:

City Clerk