

AGENDA ITEM SUMMARY

City Council



STAFF

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SUBJECT

First Reading of Ordinance No. 023, 2023, Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest.

EXECUTIVE SUMMARY

The purpose of this ordinance is to amend the Fort Collins Land Use Code to include regulations for reviewing and permitting designated areas and activities of statewide interest - a new 1041 permit process for major domestic water, sewage treatment and highway projects. 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts.

If Council wishes to provide additional time for review and consideration of the Ordinance, a postponement by motion to a date certain would be appropriate or providing additional time between first and second reading. Regardless, staff recommends Council use February 7th for discussion and further clarifications. If there will not be a hearing on February 21st, a new notice will need to be published in a newspaper of general circulation at least 30 days prior to the hearing.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The term "1041" refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974, and the statutes regarding 1041 powers are also referred to as the Areas and Activities of State Interest Act ("AASIA"). The statute authorizes local governments to regulate specified activities and areas, and the proposed regulations address three types of activities listed in the statute. In October 2021, Council adopted Ordinance No. 122, 2021, to designate the following activities as being subject to the City's authority granted under the AASIA: 1. Domestic water and wastewater treatment facilities; and 2. Highways and Interchanges. In Ordinance No. 122, 2021, Council also imposed a moratorium on conducting such activities, with certain exceptions, until Land Use Code regulations to administer the designated activities

were adopted or until December 31, 2022. The moratorium was extended in December 2022 until March 31, 2023, by Ordinance 139, 2022.

As directed by City Council through a resolution adopted May 2021, staff has sought input from engaged community partners; including utility providers and environmental advocacy groups on 1041 regulations for major domestic water, sewage treatment and highway projects as set forth in the AASIA. Generally, these types of projects are reviewed through the Site Plan Advisory Review (SPAR), and by adopting the 1041 powers, the City will leverage a regulatory framework to review projects as opposed to the SPAR advisory process, which is non-binding. Following Council feedback, regulatory goals have included defining a process that is (1) contextually appropriate to Fort Collins, (2) addresses deficiencies within the SPAR process, (3) provides predictability for developers and decision makers, (4) establishes a meaningful public process, and (5) incentivize project siting and design that avoid impacts to critical natural habitat, cultural resources, and disproportionately impacted communities.

1041 regulations align with City Plan environmental health policies and principals - by directing development away from natural features to the maximum extent feasible. Protecting and enhancing the environment is a core value in Fort Collins, and the community's leadership on environmental stewardship and conservation reinforces that core value. Since 1997, the Fort Collins Land Use Code Section 3.4.1 has included development standards directed at protecting and enhancing natural habitat features through buffering, naturalistic design, and mitigation performance criteria. These same guiding principles are incorporated within the proposed 1041 regulations for activities of statewide interest.

What problem do 1041 regulations solve?

The Site Plan Advisory Review (SPAR) process requires the submittal and approval of a site development plan that describes the location, character and extent of improvements to parcels owned or operated by public entities. Projects subject to SPAR are reviewed by staff through an advisory process and the level of details provided through the SPAR process are limited in scope. Additionally, because the SPAR process is advisory and non-binding there may be projects that were not initiated by public entities through the SPAR development review process. As an example: in 2016, a Boxelder Combined Interceptor Sewer was replaced within an existing 80' easement and stretched 6,130 Linear feet. Because the project's siting and design aligned with Running Deer natural area (city-owned property), the project was required to follow the City's Natural Area standards for that portion of the project on city owned property, but a SPAR was never reviewed. The 1041 permitting process would give local control of these types of projects, allow greater transparency through enhanced public engagement opportunities, and through the permitting authority, impose higher standards and improved environmental protections across the City. Staff has researched past projects that would meet the project size thresholds proposed under the 1041 regulations. (ATTACHMENT – Example past projects)

When is a project required to obtain a 1041 permit?

To provide additional predictability, staff included more prescriptive language within the Article 6 definitions that narrows the State AASIA definitions while continuing to comply with the scope of the authority provided under the AASIA. These new project definitions consider size thresholds like pipe diameter, pipe length, and easement size. In concert with the Finding of Negligible Adverse Impact (FONAI) determinations (LUC 6.6.5), these definitions and the pre-application submittal meeting (LUC 6.6.3) incentivize applicants to propose a development plan that avoids adverse impacts before entering a full permit application (LUC 6.6.6).

Definitions

The proposed regulations define project-size thresholds (e.g., pipe diameter, pipe length, and easement size). The 30-foot easement size in combination with 1,320 linear feet roughly equates to just under one (1) acre of impact area, which is used as a threshold for state agency permitting programs. This impact area is roughly equivalent to four (4) lots within the old town neighborhoods.

The definitions included in the City's 1041 Regulations are similar to the Larimer County regulations (ATTACHMENT - Peer community research) to align with a consistent approach. The definitions regarding major domestic water and sewer facilities are written to comply with the scope of authority provided under the AASIA statute. To provide additional predictability and to more precisely identify which projects have the potential to adversely impact important community resources, staff has provided more prescriptive language within the definitions of the Land Use Code that bring more precision to the AASIA definitions. Additionally, the definitions provide a description for projects that would not be covered by the scope of the regulations. For example: the definition of major domestic water and wastewater excludes irrigation and stormwater related facilities. Additionally, work within an existing easement is excluded where the surface impact is not expanded beyond 30-feet wide by 1,320 linear feet in the aggregate. A specific set of exemptions are provided within the regulations and separate from the definitions (LUC 6.4.1). Examples of the specific exemptions include (1) any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process (e.g., NEWT 3 pipeline); and (2) a proposed development plan that is directly necessitated by a proposed residential, commercial, industrial or mixed-use development (e.g., Bloom pipeline).

FONAI Review and Evaluation Criteria

A guiding principle of this process is to incentivize project siting and designs, prior to a full permit, that minimize impacts to Disproportionately Impacted Communities, critical natural features, historic and cultural resources and City-owned properties. As such, staff proposes a review process that allows an applicant to avoid a full 1041 permit submittal if their project design meets that intent. Geographic-based thresholds are included as evaluation criteria for determining the potential for adverse impacts ATTACHMENT - MAPS - FONAI evaluation criteria. Once a potential applicant determines that their project falls within the defined project size thresholds, a pre-application review and neighborhood meeting would be scheduled. A Finding of Negligible Adverse Impacts (FONAI) is a review by staff following a neighborhood meeting to determine applicability of the standards and if a full permit is required. Staff will evaluate a FONAI determination using the following criteria and such determination is appealable to the Planning and Zoning Commission. In addition to FONAI evaluation criteria, mitigation plans reviewed by staff may be a factor when issuing a Finding of Negligible Adverse Impact and whether a 1041 permit is required.

Has potential to adversely impact:

- City natural areas or parks
- City-owned property
- High Priority Habitat and Natural Habitat Corridors
- Natural habitat features and buffer zones
- Historic and Cultural Resources
- Disproportionately Impacted Communities

Is the standard to achieve a FONAI too high?

As seen in version-two of the draft 1041 regulations, including the map-based layers within the definitions of what qualifies as an activity of statewide interest created confusion and greater uncertainty. Whereas initial community concerns implied the creation of "loop-holes" and "casting too wide of a net", upon further scenario planning, adding geographic thresholds to the definitions also created similar concerns. Based on stakeholder feedback from both environmental groups and potential applicants for a 1041 permit, the proposed code language continues to focus on impacts to specific resources through pre-application review, the determination of adverse impacts, and common review standards applied to a full permit.

The geographic areas within the FONAI evaluation incentivize the applicant to propose a siting and design that avoids these areas of interest. If the applicants propose a project design that avoids geographic areas within the FONAI evaluation criteria, a potential applicant could save the proposed projects months of time by receiving a FONAI without a full permit. If the applicant cannot find a siting and design alternative then staff may consider compensatory mitigation as defined in the Code which would allow the project to

proceed with conditions. This process not only allows additional predictability for the applicant but also greater transparency and enhanced opportunities for the community's engagement.

Additional option for Council's consideration

Environmental stakeholders have suggested that the regulations do not account for construction activities outside the jurisdiction that have an adverse impact on land area within the jurisdiction. Staff has not included a common review standard within proposed 1041 regulations to review portions of a project outside the City limits that is seeking to place a portion of such project within the City that would be subject to 1041 review. To the extent Council wishes to explore this option for inclusion in the proposed 1041 regulations, further analysis and discussion with staff is recommended.

CITY FINANCIAL IMPACTS

With the information available to staff through a recent Request for Information (RFI), a full permit review (only) is estimated to cost between \$20-30K per application reviewed. A Request for Proposal (RFP) will be issued shortly after the adoption of the Code for an on-call contractor servicing third party permit review of all phases of the 1041 permit: including conceptual, FONAI, and full permit review. All costs assessed by the contractor will pass through to the applicant and an additional staffing analysis is needed for ongoing management of the permitting program. The proposed program design will help staff get the program started soon after adoption with existing staff levels, and better prepare Community Development and Neighborhood Services for a future BFO offer. If Council adopts the ordinance on first reading, staff will prepare a supplemental appropriation for Council's consideration shortly after second reading of the Code.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff met with several City Boards and Commissions listed in the community member outreach activities listed in subsequent sections of the Council materials. During the Planning and Zoning Commission hearing on January 25, the Commission unanimously adopted the recommendation below:

The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed 1041 regulations until the public has sufficient time to review staff's Version 3 and to comment fully on its impact. The Planning and Zoning Commission believes the proposed regulation is directionally correct; however, additional input is needed by affected parties on at least the following areas:

- *Potential consequences of the proposed regulation, as currently written*
- *The extent to which the regulation could legally extend to impacts created by components of the project outside the jurisdictions but that affect the natural resources and natural areas of Fort Collins*
- *Whether the scope of projects to be regulated is appropriate, relative to what would be considered material in the scope of such projects.*

This recommendation could require that more time be allowed between first and second readings, or that the current moratorium be extended, if necessary. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item.

PUBLIC OUTREACH

Since the November 7, 2022, City Council work session, staff sought input from engaged community partners; including utility providers and environmental advocacy groups on 1041 regulations for water and highway projects that continue to meet the following regulatory goals (1) contextually appropriate to Fort Collins, (2) provide predictability for developers and decision makers, and (3) provide adequate guidance for staff review and implementation of permits. Staff has provided the notes and written comments from working group members as an attachment to this memo.

Community Member Outreach Activities:

- Staff convened 90-minute working groups representing regional economic, and environmental interest, as well as representation from City Boards and Commissions, local water provider, and regional CDOT representatives. Notes from these group conversations are provided as an ATTACHMENT - Phase III Engagement Summary
- Staff meet 1:1 with interested groups to discuss redline edits to version-two of the draft regulations and provide general feedback on policy direction. 1:1 meeting in November through January 2023 are included in the list below.
- Staff hosted a public open house at Fort Fun along Mulberry Ave. January 19 at 4pm Spanish materials were presented, and a survey provided. A summary of the feedback themes received from Disproportionately impacted community members is provided as an ATTACHMENT - Disproportionately impacted communities feedback

Date	Community Member Outreach Activities
1/25/2023	Planning and Zoning Commission Hearing
1/19/2023	Disproportionately Impacted Communities - Open House
1/19/2023	Water Commission
1/13/2023	Planning and Zoning Commission work session
1/12/2023	Economic working group
1/11/2023	Fort Collins Utilities
1/11/2023	Water Provider Working Group
1/9/2023	Environmental Working Group
1/9/2023	Save the Poudre
1/6/2023	Boards and Commissions Working Group
1/5/2023	Fort Collins Sustainability Group
12/21/2022	Transportation Board
12/19/2022	Economic working group
12/16/2022	Natural Areas Department
12/15/2022	Natural Resources Advisory Board
12/14/2022	Northern Water
12/13/2022	Boards and Commissions Working Group
12/7/2022	CDOT
12/7/2022	Water Provider Working Group
12/6/2022	Environmental Working Group
12/5/2022	Boxelder Sanitation
11/17/2022	Water Commission
11/16/2022	Transportation Board
11/10/2022	Planning and Zoning Commission work session
11/9/2022	Land Conservation Stewardship Board
11/6/2022	City Council work session

ATTACHMENTS

1. Ordinance for Consideration
2. Example Past Projects
3. Peer community research
4. MAPS - FONAI evaluation criteria
5. Phase III Engagement Summary
6. Disproportionately impacted communities' feedback
7. Working group discussion notes and comments
8. Letters to City leaders