



## AGENDA ITEM SUMMARY

City Council

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### STAFF

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Kirk Longstein, Senior Environmental Planner  
Clay Frickey, Interim Planning Manager  
Paul Sizemore, Director, Community Development and Neighborhood Services  
Brad Yatabe, Legal

### SUBJECT

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**Second Reading of Ordinance No. 071, 2023, Amending the Land Use Code to Include Guidelines and Regulations for the Administration of Designated Areas and Activities of State Interest.**

### EXECUTIVE SUMMARY

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This Ordinance, adopted on First Reading on May 2, 2023, by a vote of 6-1 (Nay: Peel), amends the Fort Collins Land Use Code to include 1041 regulations. The 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts. The 1041 regulations would allow for reviewing and permitting of two designated areas and activities of statewide interest: (1) major domestic water, sewage treatment; and (2) highway projects. Staff has amended the Ordinance to reflect the motion adopted by Council on first reading on May 2, 2023.

### STAFF RECOMMENDATION

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- Planning staff recommend adoption of the Ordinance with amendments adopted on first reading.
- Planning staff also recommends adoption of two additional amendments for Council consideration during second reading.

### BACKGROUND / DISCUSSION

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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 from December 2022 until March 31, 2023, by Ordinance No. 139, 2022.

As directed by 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: (1) is 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) incentivizes project siting and design that avoid impacts to critical natural habitat, cultural resources, and disproportionately impacted communities.

### **City Council Amendments Adopted at the May 2, 2023, Hearing**

***Mayor Pro Tem Francis moved, seconded by Councilmember Canonico, to adopt on first reading Ordinance No. 071-2023 Amending the Land Use Code to Include Regulations for Areas and Activities of State Interest, including staff recommendations of 2a and 2 b.***

***Staff Recommendation 2a) Add conceptual submittal document that summarizes the potential for a significant impact.***

***Staff Recommendation 2b) Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination), and extend comment period during the pre-application activity review.***

City Attorney Daggett ran through the changes associated with the scope changes to the ordinance relating to Decision Point 1.

***Mayor Pro Tem Francis moved, seconded by Councilmember Peel, to amend the motion on the floor to amend the ordinance to include the changes related to Decision Point 1 read into the record by the City Attorney.***

***The motion to amend the motion on the floor carried 7-0.***

***The motion as amended carried 6-1.***

***Ayes: Councilmember Canonico, Pignataro, Gutowsky, Ohlson, Mayor Pro Tem Francis and Mayor Arndt.***

***Nays: Councilmember Peel.***

Below is a summary of the staff recommendations adopted on first reading.

- Staff recommendations Council adopted on first reading and are already reflected in ordinance:
  - Amend the Code to remove pipe-size diameter and exclude projects within existing public Right of Way
  - Amend the Code to add a definition that redefines the Applicability of Standards determination FONAI to a FONSI, Impact, Cumulative impacts, Significant
- Staff recommendations Council adopted on first reading and are shown in the attached mark up:
  - Conforming changes related to the updates to the definitions and applicability of standards determination.
  - Add conceptual submittal document that summarizes the potential for a significant impact.
  - Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination), and extend comment period during the pre-application activity review.

The amendments that Council adopted on first reading, including the changes that staff was directed to make for second reading, are incorporated in the version of Ordinance No. 071, 2023, provided for

Council's consideration at second reading. These changes that staff were directed to make for second reading are shown in the attached mark-up version of the Ordinance.

### **Second Reading Amendments – Two Additional Amendments for Council Consideration During Second Reading**

- Two Additional Amendments Recommended by staff for Council consideration. Sample motions are attached.
  - 1) Delete reference to Council Pre-Application Hearing Regarding Areas and Activities of State Interest (See attachment 3 for sample motion and details regarding the amendment.)

Mitigation guarantee if FONSI issued (See attachment 4 for sample motion and details regarding the amendment.)

### **CITY FINANCIAL IMPACTS**

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#### **Decision Point 5 - Permit Administration**

As directed by Council, staff plans to bring forward a supplemental appropriation on May 30, 2023, to support the administration of 1041 permit applications using a third-party contractor.

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. This would include conceptual, FONSI, and full permit review. All costs assessed by the contractor will pass through to the applicant. Based on an RFI issued in the fall of 2022, staff estimate \$30,000 dollars for each third-party application review, depending on complexity of the project.

Based on a preliminary staffing analysis for ongoing management of the permitting program that utilizes a third-party contractor, a development review permit fee will be assessed in addition to the third-party review fees. 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. Staff estimate these fees will align closely with the existing PDP development review fee.

In addition to an RFP for on-call permit review services, staff is requesting \$80,000 in supplemental appropriations to generate customer tools which support GIS analysis, and project management services that will establish a clear expectation for the applicant and the third-party consultant to meet the code requirements.

### **BOARD / COMMISSION / COMMITTEE RECOMMENDATION**

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During the January 25, 2023, meeting, the Planning and Zoning Commission shared that they believe 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.

Staff addressed these comments through the 5 decision points presented to Council on May 2, 2023.

## **PUBLIC OUTREACH**

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Based on Council direction, staff prepared re-engagement questions, met with stakeholders, and consolidated feedback in a memo circulated to Council on April 14. Public comment provided during first reading, provided feedback on the five decision points and staff recommendations.

## **ATTACHMENTS**

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1. Ordinance for Consideration
2. Changes Adopted On First Reading and Related Second Reading Changes (with redline)
3. Amendment #1: No Pre-Application Council Review
4. Amendment #2: Require Guarantee for Mitigation if FONSI Issued
5. Presentation