

AGENDA ITEM SUMMARY

City Council



STAFF

Paul S. Sizemore, Director of Community Development & Neighborhood Services
Brad Yatabe, Legal

SUBJECT

Second Reading of Ordinance No. 033, 2023, Extending the Moratorium on Certain Activities of State Interest Designated in Ordinance No. 122, 2021.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on March 7, 2023, extends the length of a moratorium previously imposed through Ordinance No. 122, 2021, and further extended with Ordinance No. 139, 2022, on two designated activities of state interest. The proposed Ordinance extends the length of the existing moratorium for three months beyond March 31, 2022, or until City Council adopts guidelines for the administration of the two designated activities. Extending the moratorium allows staff to reengage with stakeholders and develop policy decision points for Council's consideration along with first reading of the version-three 1041 regulations, May 2, 2023.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

During the Council meeting on February 7, 2023, the Council unanimously adopted a motion to postpone first reading of the 1041 regulations until May 2, 2023. This continuation by Council requires an extension of the Moratorium, and by extending the moratorium for three months through the end of June 30, 2023, staff has additional time to reengage stakeholders on the current version-three of the draft 1041 regulations. The City has received numerous requests from public entities that may be subject to the proposed 1041 regulations for additional time to review and comment on the regulations, including requests made at the January 25 Planning and Zoning Commission meeting and the Council February 7 meeting.

Procedure for the Designation of Areas and Activities and Adoption of Guidelines

In order to exercise 1041 powers, the Colorado Revised Statutes require the City to designate the areas and activities to be regulated and adopt guidelines to administer the designated areas and activities. The designation of areas and activities may occur only after a noticed public hearing where Council must consider, at a minimum, the intensity of current and foreseeable development pressures. Council must specify the boundaries of any designated area, why the designated area or activity is of state interest, the dangers from uncontrolled development of the area or conduct of such activity, and the advantages of developing such area or activity in a coordinated manner. The City may adopt guidelines, and regulations for carrying out such guidelines, for administering designated areas and activities that are more stringent than the criteria listed in the applicable state statutes.

Once the City holds a public hearing and initially designates an area or activity to be of state interest, no person may engage in development within the designated area or conduct the designated activity until the City has finally determined the designation and guidelines. In other words, a moratorium goes into effect on development within the initially designated area or on the initially designated activity until the City makes a final determination on the designation and the applicable guidelines.

To the extent a person proposes to engage in development in an area of state interest or conduct and activity of state interest that the City has not previously designated and for which guidelines have not been adopted, the City is authorized to hold a public hearing to designate such area or activity and to adopt guidelines under which to review the proposal. In other words, the City has an opportunity to exercise 1041 powers over proposals for areas and activities not previously anticipated as requiring regulations.

Alignment with Citywide Policy

In terms of policy alignment, both City Plan and the Strategic Plan identify policies and objectives that aim to direct development in a way that ensures compatibility between adjacent land uses, minimize infrastructure and resource needs, and protect historic and natural resources. Currently, the City's Land Use Code provides a limited local review process for public agency projects. As such, adopting 1041 regulations would offer the City greater authority over public development projects that qualify as areas or activities of statewide interest per House Bill 74-1041 and help the City achieve its stated policy objectives.

CITY FINANCIAL IMPACTS

There are no financial impacts to City resources.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

During the Council meeting on February 7, 2023, the Council unanimously adopted a motion to postpone first reading of the 1041 regulations until May 2, 2023.

During the Planning and Zoning Commission hearing on January 25, 2023, the Commission unanimously adopted the recommendation:

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

Staff will implement an engagement plan with stakeholders during the three-month extension.

ATTACHMENTS

1. Ordinance for Consideration