

AGENDA ITEM SUMMARY

City Council



STAFF

Kirk Longstein, Senior Environmental Planner
Monica Martinez, Finance
Brad Yatabe, Legal

SUBJECT

Second Reading of Ordinance No. 076, 2023, Appropriating Prior Year Reserves for the Administration of the Land Use Code Regulations for Designated Areas and Activities of State Interest.

EXECUTIVE SUMMARY

This Ordinance, adopted by a vote of 5-1 (Nay: Peel) on First Reading on June 6, 2023, appropriates general fund dollars to administer the recently adopted 1041 regulations. The 1041 regulations represent a new permitting program for designated activities of statewide interest, including major domestic water, sewage treatment and highway projects.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second 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.

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 was adopted on Second Reading on May 16, 2023. 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. As an overview, the Council adopted 1041 regulations and sets forth a permitting program summarized in three parts shown in the table below and the Attachment: Finding of No Significant Impact (FONSI) review; full permit review; and any permit conditions.

As directed by the Council, staff recommend a supplemental appropriation to support the administration of 1041 permit applications using professional services and on-call permit review contractors.

To implement the recently adopted 1041 regulations, staff plan to utilize an on-call contractor servicing third party permit review of all phases of the 1041 permit. The scope of these services includes all phases of the review including pre-application/Finding of No Significant Impact (FONSI), full permit review, and inspections (Permit Conditions). Based on a Request For Information (RFI) issued in the fall of 2022, staff budget up to \$35,000 dollars for each third-party application review, depending on complexity of the project. An additional \$35,000 is estimated for inspections during the permit conditions phase after a permit is approved. By managing these services, City staff intend to mitigate scope-creep and provide cost predictability to future permit applicants. In addition to these pass-through costs, the applicant will provide the City with a guarantee of financial security for all permit conditions. Through each of the permit phases, all costs assessed by the contractor will be paid by the City and fully reimbursed by the applicant. This ordinance will appropriate the budget necessary for the City to incur these costs as well so that staff can administer post approval phases with a third party.

Development review permit fees will also be assessed in addition to the third-party review fees. These fees are based on a preliminary staffing analysis of the required ongoing management needs for the permitting program. As reflected in the table below, staff estimate assessed fees will align closely with the existing development review fees. The FONSI phase is estimated to be assessed a \$15,000 administrative fee and the Full Permit Review is estimated to be assessed a \$25,000 administrative fee. 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 Budgeting for Outcomes (BFO) offers for administering the 1041 permit review program. The expense budget for these permit review fees will not be appropriated as the assessed revenue will be used to offset the cost of existing staffing levels.

There is some level of uncertainty regarding the number of projects that may be subject to these regulations. Through preliminary review of water provider capital projects, staff estimate at least five (5) potential projects that will require a permit through these new regulations.

1041 Regulations				
Permit Phase	City Permit Fee	On-call Permit Review and Inspection Services	1041 Application Requirements and Post Approval Conditions	
FONSI Review	\$15,000	\$10,000	Conceptual	LUC 2.2
			Pre-application Activity Review	LUC 6.6.3
			Public Comment Period	LUC 6.6.4
			FONSI Determination	LUC 6.6.5
			Appeal	LUC 2.2.12(D)
Full Permit Review	\$25,000	\$25,000	Neighborhood Meeting	LUC 6.6.6
			Completeness Check/ Permit Review	LUC 6.6.7
			P&Z Hearing	LUC 6.6.12
			City Council Hearing	LUC 6.6.13
			Issuance of Permit	LUC 6.6.15
Permit Conditions	-	\$35,000	Progress Reports	LUC 6.12.1
			Inspections and Monitoring	LUC 6.12.6

In addition to budget for on-call permit review services, staff is also requesting a one-time, \$80,000 supplemental appropriation to generate customer tools which support GIS analysis, and professional services that will establish a clear expectation for the applicant and the permit reviewer to meet the code requirements. The initial Scope of these supporting customer tools includes:

- A. Project Management – Create development review workflow, application checklist, completeness review, and permit documents. Support staff in establishing information materials and inspection schedules that inform applicants of the development review process and permit applications.
- B. Regulatory GAP Analysis - Identify data gaps and processes for reviewing submittal documents against the new 1041 review standards and criteria. Comprehensive review and assessment of existing regulatory framework and provide a matrix identifying gaps associated with water and transportation infrastructure projects, particularly those related to river, riparian, and recreational resources. Recommend minimum application submittal information and processes for reviewing submittal documents meeting requirements of the City Code's standards, purposes, and intent.
- C. Natural Resources Inventory – Updates to the natural resources and habitat features inventory GIS map that will serve as a baseline for determining a Finding of No Significant Impact (FONSI). The scope of the project includes defining habitat cover types, matching existing data to the extent possible, initial desktop mapping, ground truthing, and desktop corrections. The Contractor must provide the necessary components consist of desktop mapping and ground truthing. Additionally, the Contractor must provide access and integrate various data sources including Colorado Parks and Wildlife data, Natural Areas Department habitats, wetland data, and others that support the 1041 review standards and criteria.

CITY FINANCIAL IMPACTS

This Ordinance will appropriate \$350,000 from General Fund Reserves for third-party application review and inspection expenses. This amount assumes five (5) applications for 2023 with a high-end expense of \$70,000 per application for third-party services. The City will receive reimbursement for all third-party expenses from the responsible applicant.

This Ordinance will also appropriate \$80,000 from General Fund Reserves to be used for generating customer tools as outlined above.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff heard general support from City Council during the first and second reading to bring forward a supplemental appropriation in support of recently adopted 1041 regulations.

PUBLIC OUTREACH

Staff public outreach included discussing five (5) key policy questions with stakeholders, one of which asked the opinion of utilizing a third-party on-call contractor verse adding a city full-time staff member to review 1041 permit applications. 1041 regulations decision point 5 asked:

- *Should the Code include the use of third-party contractors to support staff administration of permit applications?*

Feedback themes shared with Council during the first reading adoption of the code on May 2, 2023, included:

- **Environmental Groups** support third-party contractors provided they are solely supporting the City, are not biased, and their payments are transparent.
- **Water Providers** do not support outsourcing this important task due to cost control risks, difficulty in assessing ultimate costs, extended timelines.
- **Some Water Providers** favor supplemental appropriation for staff to administer 1041 permit applications, suggesting In-house staff would be more efficient and consistent.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration