

ATTACHMENT – Decision Point 1: Update Definitions

The definitions included in the City's 1041 Regulations are similar to the Larimer County regulations as well as several other counties with 1041 regulations to align with a consistent approach. 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).

- **Update project-size thresholds and exclude all projects in existing public right-of-way:**

As noted by stakeholders, the current definition's inclusion of pipe-size diameter is not the best proxy when determining significant impacts resulting from the project's scope. Additionally, when pipe-size diameter and easement width are both included within the definition for domestic water facilities there is less certainty for which projects that are covered by the Code's definition which potentially include projects not intended to be regulated by 1041 powers. The intent is to provide a definition that includes projects that have one acre or more of impact. While the city intends to incentivize project work within existing ROW and easements that were previously disturbed, if the project requires an extension of the ROW to greater than one acre, a FONAI review is required. To continue providing predictability for developers and decision makers, staff recommend removing pipe size diameter from the definition and keep easement width as a project size threshold. Staff recommend the following changes to the definitions to align with the code's intent, and if directed by Council have these changes ready during first reading:

Proposed Definitions Update:

Public right-of-way shall mean an area dedicated to public use or impressed with an easement for public use which is owned or maintained by the City and is primarily used for pedestrian or vehicular travel or for public utilities or other infrastructure. Right-of-way shall include, but not be limited to, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking area and any other public way.

Major new domestic water system shall mean:

A system of wells, water diversions, transmission mains, distribution mains, ditches, structures, and facilities, including water reservoirs, water storage tanks, water treatment plants or impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses;

And all or part of a system described meet the following criteria:

- (a) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.
- (b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan

In determining whether a proposed development plan is a major new domestic water supply system, the Director may consider water rights decrees, pending water rights applications, intergovernmental agreements, treaties, water supply contracts and any other evidence of the ultimate use of the water for domestic, human consumption or household use. Domestic water supply systems shall not include that portion of a system that serves agricultural customers, irrigation facilities or stormwater infrastructure.

Major new sewage system shall mean:

- (1) A new wastewater treatment plant;
- (2) A new lift station; or
- (3) An interceptor main or collector sewer used for the purposes of transporting wastewater that meets the following criteria:
 - (a) Will require a new public right-of-way or easement greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan.
 - (b) Will require a new, or utilize an existing, easement within any City natural area or conserved land greater than 30-feet in width and 1,452 linear feet in length in the aggregate for the proposed development plan

Major extension of an existing domestic water or sewage treatment system shall exclude the following:

- (1) Any maintenance, repair, adjustment;
- (2) Any existing facility or pipeline or the replacement or the relocation, or enlargement of an existing pipeline or facility within the same public right-of-way or easement not greater than 30-feet in width and for a distance of 1,452 linear feet or less;
- (3) A new pipeline or facility within an existing public right-of-way;
- (4) A new pipeline or facility within easements not greater than 30-feet in width and for a distance of 1,452 linear feet or less;
- (5) A new pipeline or facility constructed partially within an existing public right-of-way and partially within adjoining easements that are not greater than 30-feet in width and for a distance of 1,452 linear feet or less; or
- (6) Any sewage system facility that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

- **Change FONAI to FONSI:**

Version three of the draft regulations uses the term “negligible” rather than “significant” based on Council direction during a June 2022 work session. “Negligible” is commonly used within federal agency National Environmental Protection Act (NEPA) guidance and methodology for conducting supplemental environmental assessment. When the proposed definition of **Adverse Impact** is paired with negligible, a Finding of Negligible Adverse Impact (FONAI) has the potential for impact at a lower intensity than major, and a higher standard than an impact deemed “significant”.

Based on stakeholder feedback from both environmental and water provider stakeholders, the term “Finding of No Significant Impact (FONSI)” is already a recognized standard, the term Negligible Adverse Impact (FONAI) is perceived as more subjective within the context of 1041 regulations. To provide predictability, staff recommend redefining the term Finding of Negligible Adverse Impact (FONAI) to a Finding of No Significant Impact (FONSI). In determining whether an impact is significant, the magnitude, duration, and likelihood of an impact is evaluated within context (geographic scope, setting, and scale) of the proposed project. The AIS attachment titled “What Makes an Impact Significant” describes this evaluation.

If directed by Council, Council may adopt the following amendment to the Code’s definition of **Adverse Impact**. **This change also applies to the common review standards.**

Current Definition:

***Adverse impact** shall mean the direct or indirect negative effect or consequence resulting from development. Adverse impact shall refer to the negative physical, environmental, economic, visual, auditory, or social consequences or effects that may or may not be avoidable or fully mitigable. Adverse impacts may include reasonably foreseeable effects or consequences caused by the development plan that may occur later in time or be cumulative in nature.*

Proposed Definition UPDATE:

- ***Impact** shall mean the direct or indirect negative effect or consequence resulting from development that may or may not be avoidable or fully mitigated.*
- ***Cumulative impacts** shall mean the impact on the environment and cultural impacts which result from the incremental impact of the development plan when added to other present, and reasonable future actions.*
- ***Finding of No Significant Impact (FONSI)** shall mean the decision by the Director as to whether a potential impact is not significant based on the scale and context of the proposed development plan as well as the magnitude, duration, or likelihood of an impact occurring.*

UPDATE: 6.7.1 Review Standards for All Applications

In addition to the review standards for specific activities listed at Divisions 6.8 and 6.9, all applications under these Regulations, in consideration of proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in City Council's reasonable judgment. **The standards shall be evaluated for significant impacts within the geographic context of the development plan, and relate to the magnitude, duration or likelihood of such an impact.** To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance. If City Council finds the development plan does not comply with all applicable standards, the permit shall be denied unless City Council, in its sole discretion, imposes conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, in which case City Council may approve the permit. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

UPDATE: 6.8.3 and 6.9.3 Specific Review Standards

The above highlighted language updating Section 6.7.1 would also be added to Section 6.8.3 which sets forth specific review standards for major new domestic water or sewage treatment systems or major extension and Section 6.9.3 which sets forth specific review standards for arterial highway, interchange, or collector highway projects.