

ORDINANCE NO. 071, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING THE LAND USE CODE TO INCLUDE GUIDELINES AND
REGULATIONS FOR THE ADMINISTRATION OF DESIGNATED AREAS AND
ACTIVITIES OF STATE INTEREST

WHEREAS, on December 2, 1997, by its adoption of Ordinance No. 190, 1997, the City Council enacted the Fort Collins Land Use Code (the "Land Use Code"); and

WHEREAS, at the time of the adoption of the Land Use Code, it was the understanding of staff and the City Council that the Land Use Code would most likely be subject to future amendments, not only for the purpose of clarification and correction of errors, but also for the purpose of ensuring that the Land Use Code remains a dynamic document capable of responding to issues identified by staff, other land use professionals and citizens of the City; and

WHEREAS, Colorado Revised Statutes ("C.R.S.") Section 24-65.1-101 et seq, commonly referred to as 1041 statutes or powers, empowers the City to designate certain areas and activities to be matters of state interest subject to City regulation and to adopt guidelines and regulations for the administration of designated areas and activities; and

WHEREAS, on second reading on October 19th, 2021, City Council adopted Ordinance 122, 2021, designating two activities of state interest:

- (1) the site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems; and
 - (2) the site selection of arterial highways and interchanges and collector highways
- ; and

WHEREAS, pursuant to C.R.S. Section 24-65.1-404(4) and the City's power to impose a moratorium on development activity pursuant to its home rule powers granted under Article XX of the Colorado Constitution, Ordinance 122, 2021, also imposed a moratorium on conducting the designated activities until December 31, 2022, to allow City staff time to draft guidelines and regulations for the administration of the designated activities; and

WHEREAS, pursuant to Ordinance 139, 2022, the moratorium was extended until March 31, 2023, to allow additional time for City staff to continue drafting guidelines and regulations; and

WHEREAS, pursuant to Ordinance No. 033, 2023, the moratorium was extended until June 30, 2023, to allow additional time for the public to evaluate the proposed

guidelines and regulations and for City staff to continue interacting with the public and continue drafting; and

WHEREAS, on January 25, 2023, the Planning and Zoning Commission reviewed the draft guidelines and regulations and recommended that City Council not adopt the draft guidelines and regulations until, among other issues mentioned in the recommendation, the public has sufficient time to review the draft guidelines and regulations and to comment fully on the impact of such guidelines and regulations; and

WHEREAS, notice of the May 2, 2023, Council hearing to adopt of 1041 guidelines and regulations and where the proposed guidelines and regulations could be examined was published in the Coloradoan; and

WHEREAS, City Council held a public hearing pursuant to C.R.S. 24-65.1-404 to consider the adoption of guidelines and regulations for the administration of the two activities designated pursuant to Ordinance 122, 2021; and

WHEREAS, after considering the Planning and Zoning Commission recommendation, public input, and the City staff recommendation, the City council has determined that the guidelines and regulations set forth in this Ordinance for the administration of the two activities designated pursuant to Ordinance 122, 2021, are in the best interests of the City and shall be adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Division 1.1 of the Land Use Code is hereby amended to read as follows:

DIVISION 1.1 - ORGANIZATION OF LAND USE CODE

The City of Fort Collins Land Use Code is organized into ~~five (5)~~ **six (6)** Articles as follows:

Article 1 General Provisions

Article 2 Administration

Article 3 General Development Standards

Article 4 District Standards

Article 5 Definitions

Article 6 Guidelines and Regulations for Areas and Activities of State Interest

The General Provisions contained in Article 1 address the organization of this Land Use Code; its title, purpose and authority; the establishment of the Zoning Map and Zone Districts; rules for interpretation and measurements; rules for nonconformities and legal matters.

Article 2, Administration, guides the reader through the procedural and decision-making process by providing divisions pertaining to general procedural requirements and a twelve-step common development review process, as well as providing a separate division for each type of development application and other land use requests.

The General Development Standards contained in Article 3 establish standards which apply to all types of development applications unless otherwise indicated. This article is divided into divisions addressing standards for site planning and design, engineering, environmental and cultural resource protection, compact urban growth, buildings, transportation and circulation, and supplemental uses. All zone districts within the City of Fort Collins and their respective list of permitted uses, prohibited uses and particular development standards are located in Article 4, District Standards. These zone districts directly relate to the Zoning Map and Zone Districts established in Article 1.

Definitions of terms used throughout this Land Use Code are included in Article 5.

Article 6 sets forth guidelines and regulations for areas and activities of state interest adopted pursuant to Section 24-65.1-101, et seq., C.R.S.

This method of organization, which distinguishes and separates general provisions, administration, general development standards, and district standards, ~~and~~ definitions, ~~and areas and activities of state interest~~, is intended to provide a user-friendly and easily accessible Land Use Code by consolidating most city regulations addressing land use and development, standardizing the regulatory format, providing common development review procedures, separating and clarifying standards and separating and clarifying definitions.

When this Land Use Code is amended, any amendments to procedural provisions will be made in Article 2, Administration. Amendments to general development standards will occur in Article 3, General Development Standards. Amendments to District Standards (Zone Districts) will be made in Article 4. ~~And Article 5 will be the place to change or add definitions.~~ Amendments to areas and activities of state interest will occur in Article 6.

For an overview on how to use this Land Use Code when applying for a development application or other request, reference should be made to Section 2.1.2, Overview of the Development Review Process.

This symbol:

Examples & Explanations

appears under selected subsections of the Land Use Code. It refers to a nonregulatory manual explaining the Land Use Code's approach to development using example pictures and diagrams. The manual, called the *Fort Collins Design Manual*, is available separately.

Section 3. That Division 2.1 of the Land Use Code is hereby amended to read as follows:

DIVISION 2.1 - GENERAL PROCEDURAL REQUIREMENTS

2.1.1 - Decision Maker and Administrative Bodies

The City Council, Planning and Zoning Board~~Commission~~, Zoning Board of Appeals~~Land Use Review Commission~~ and Director are frequently referenced in this Land Use Code. Reference should be made to Chapter 2 of the City Code for descriptions of these and other decision makers and administrative bodies, and their powers, duties, membership qualifications and related matters.

The Director or the Planning and Zoning Board~~Commission~~ will consider, review and decide all development applications for permitted uses (overall development plans, PUD Overlays 640 acres or less, basic development review plans, project development plans and final plans) according to the provisions of this Land Use Code. For those development applications subject to basic development review, the Director (or the Director's subordinate) is the designated decision maker. For those development applications subject to administrative review (sometimes referred to as "Type 1 review"), the Director is the designated decision maker (see Section 2.2.7(A)(1)). For those development applications subject to P&Z review (sometimes referred to as "Type 2 review"), the Planning and Zoning Board~~Commission~~ is the designated decision maker (see Section 2.2.7(A)(2)). For PUD Overlays greater than 640 acres, the City Council is the designated decision maker after receiving a Planning and Zoning Board~~Commission~~ recommendation. The permitted use list for a particular zone district and the development review procedure "steps" for a particular development application identifies which review, Type 1 or Type 2, will apply. For building permit applications, the Building and Zoning Director~~Chief Building Official~~ is the decision maker (see Section 2.7.3). (See "Overview of Development Review Procedures," Section 2.1.2, below, for a further description of different levels of review.) City Council is the decision maker regarding the issuance of permits to conduct an activity or develop within an area of state interest pursuant to Article 6 after receiving a Planning and Zoning Commission recommendation.

2.1.2 – Overview of Development Review Procedures

This article establishes the development review procedures for different types of development applications and building permits within the city.

- (A) ***Where is the project located?*** An applicant must first locate the proposed project on the Zoning Map. Once the proposed project has been located, the applicable zone district must be identified from the Zoning Map and legend. Then, by referring to Article 4, District Standards, of this Land Use Code, the applicant will find the district standards which apply to the zone district in which the proposed project is located. The city's staff is available to assist applicants in this regard.
- (B) ***What uses are proposed?*** Next, an applicant must identify which uses will be included in the proposed project. If *all* of the applicant's proposed uses are listed as permitted uses in the applicable zone district for the project, then the applicant is ready to proceed with a development application for a permitted use. If *any* of the applicant's proposed uses are *not* listed as permitted uses in the applicable zone district for the project, then the applicant must either eliminate the nonpermitted uses from his or her proposal, seek the addition of a new permitted use pursuant to Section 1.3.4, seek a text amendment to this Land Use Code or a rezoning amendment to the Zoning Map pursuant to Division 2.9, or seek approval of a PUD Overlay pursuant to Divisions 2.15 and 4.29. Any use not listed as a permitted use in the applicable zone district is deemed a prohibited use in that zone district, unless it has been permitted pursuant to Section 1.3.4 for a particular development application or permitted as part of an approved PUD Overlay. Applications for permits pursuant to the Article 6 areas and activities of state interest provisions may be reviewed regardless of whether the zone district or districts in which the proposed project allow such a use or even expressly prohibit such use. Again, the city's staff will be available to assist applicants with their understanding of the zone districts and permitted uses.
- (C) ***Which type of development application should be submitted?*** To proceed with a development proposal for permitted uses, the applicant must determine what type of development application should be selected and submitted. All development proposals which include only permitted uses must be processed and approved through the following development applications: first through a project development plan (Division 2.4), and then through a final plan (Division 2.5). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required prior to or concurrently with the project development plan. Overall development plans, PUD Overlays, basic development reviews, project development plans and final plans are the five (5) types of development applications for permitted uses. Each successive development application for a development proposal must build upon the previously approved development application, as needed, by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4). Overall development plans, basic development reviews and project development plans may

be consolidated into one (1) application for concurrent processing and review when appropriate under the provisions of Section 2.2.3. The purpose, applicability and interrelationship of these types of development applications are discussed further in Section 2.1.3. Applications for a permit pursuant to the Article 6 areas and activities of state interest provisions are addressed in Division 2.20 and Article 6.

- (D) ***Who reviews the development application?*** Once an applicant has determined the type of development application to be submitted, ~~he or she~~ **the applicant** must determine the appropriate level of development review required for the development application. To make this determination, the applicant must refer to the provisions of the applicable zone district in Article 4 and the provisions pertaining to the appropriate development application. These provisions will determine whether the permitted uses and the development application are subject to basic development review, administrative review ("Type 1 review"), Planning and Zoning ~~Board~~ **Commission** review ("Type 2 review"), or City Council review in the case of PUD Overlays greater than 640 acres **and permits to conduct a designated activity or develop in a designated area of state interest**. Identification of the required level of development review will, in turn, determine which decision maker, the Director in the case of administrative review ("Type 1 review"), or the Planning and Zoning ~~Board~~ **Commission** in the case of Planning and Zoning ~~Board~~ **Commission** review ("Type 2 review"), or the City Council for PUD Overlays greater than 640 acres **and permits pursuant to the areas and activities of state interest provisions**, will review and make the final decision on the development application. When a development application contains both Type 1 and Type 2 uses, it will be processed as a Type 2 review.
- (E) ***How will the development application be processed?*** The review of overall development plans, PUD Overlays, project development plans and final plans, **and permits pursuant to the areas and activities of state interest provisions** will each generally follow the same procedural "steps" regardless of the level of review (administrative review, ~~or~~ Planning and Zoning ~~Board~~ **Commission**, or City Council review). The common development review procedures contained in Division 2.2 establish a twelve-step process equally applicable to all overall development plans, project development plans and final plans.

The twelve (12) steps of the common development review procedures are the same for each type of development application, whether subject to basic development review, administrative review, Planning and Zoning ~~Board~~ **Commission** review, or City Council review in the case of PUD Overlays greater than 640 acres **and permits pursuant to the areas and activities of state interest provisions** unless an exception to the common development review procedures is expressly called for in the particular development application requirements of this Land Use Code. In other words, each overall development plan, each project development plan and each final plan will be subject to the twelve-step common procedure. The twelve (12) steps include: (1) conceptual review; (2) neighborhood meeting; (3) development application submittal; (4) determination of sufficiency; (5) staff report; (6) notice;

(7) public hearing; (8) standards; (9) conditions of approval; (10) amendments; (11) lapse; and (12) appeals.

However, Step 1, conceptual review, applies only to the initial development application submittal for a development project (i.e., overall development plan or PUD Overlay when required, or project development plan when neither an overall development plan nor a PUD Overlay is required). Subsequent development applications for the same development project are not subject to Step 1, conceptual review.

Moreover, Step 2, neighborhood meeting, applies only to certain development applications subject to Planning and Zoning Board **Commission** and City Council review. Step 2, neighborhood meeting, does not apply to development applications subject to basic development review or administrative review. Step 3, application submittal requirements, applies to all development applications. Applicants shall submit items and documents in accordance with a master list of submittal requirements as established by the City Manager. Overall development plans must comply with only certain identified items on the master list, while PUD Overlays, project development plans, and final plans must include different items from the master list. This master list is intended to assure consistency among submittals by using a "building block" approach, with each successive development application building upon the previous one for that project. City staff is available to discuss the common procedures with the applicant.

- (F) ***What if the development proposal doesn't fit into one of the types of development applications discussed above?*** In addition to the four (4) development applications for permitted uses, the applicant may seek approval for other types of development applications, including development applications for a modification of standards (Division 2.8), an amendment to the text of the Land Use Code and/or the Zoning Map (Division 2.9), a hardship variance (Division 2.10), an appeal of an administrative decision (Division 2.11), **a permit to conduct an activity or develop in an area of state interest (Division 2.20 and Article 6)**, or other requests. These other types of development applications will be reviewed according to applicable steps in the common development review procedures.
- (G) ***Is a building permit required?*** The next step after approval of a final plan is to apply for a Building Permit. Most construction requires a Building Permit. This is a distinct and separate process from a development application. The twelve (12) steps of the common development review procedures must be followed for the Building Permit process. Procedures and requirements for submitting a Building Permit application are described in Division 2.7.
- (H) ***Is it permissible to talk with decision makers "off the record" about a development plan prior to the decision makers' formal review of the application?*** No. Development plans must be reviewed and approved in accordance with the provisions of this Land Use Code and the City's decision whether to approve or

deny an application must be based on the criteria established herein and on the information provided at the hearings held on the application. In order to afford all persons who may be affected by the review and approval of a development plan an opportunity to respond to the information upon which decisions regarding the plan will be made, and in order to preserve the impartiality of the decision makers, decision makers who intend to participate in the decisions should avoid communications with the applicant or other members of the public about the plan prior to the hearings in which they intend to participate.

2.1.3 - Types of Development Applications

- (A) **Applicability.** All development proposals which include only permitted uses must be processed and approved through the following development applications: a basic development review; or through a project development plan (Division 2.4), then through a final plan (Division 2.5), then through a development construction permit (Division 2.6) and then through a building permit review (Division 2.7). If the applicant desires to develop in two (2) or more separate project development plan submittals, an overall development plan (Division 2.3) will also be required prior to or concurrently with the project development plan. A PUD Master Plan associated with a PUD Overlay may be substituted for an overall development plan (Divisions 2.15 and 4.29). Each successive development application for a development proposal must build upon the previously approved development application by providing additional details (through the development application submittal requirements) and by meeting additional restrictions and standards (contained in the General Development Standards of Article 3 and the District Standards of Article 4).

Permitted uses subject to administrative review or permitted uses subject to Planning and Zoning Board **Commission** review listed in the applicable zone district set forth in Article 4, District Standards, shall be processed through an overall development plan, a project development plan or a final plan. If any use not listed as a permitted use in the applicable zone district is included in a development application, it may also be processed as an overall development plan, project development plan or final plan, if such proposed use has been approved, or is concurrently submitted for approval, in accordance with the requirements for an amendment to the text of this Land Use Code and/or the Zoning Map, Division 2.9, or in accordance with the requirements for the addition of a permitted use under Section 1.3.4. Development applications for permitted uses which seek to modify any standards contained in the General Development Standards in Article 3, or the District Standards in Article 4, shall be submitted by the applicant and processed as a modification of standards under Division 2.8. Hardship variances to standards contained in Article 3, General Development Standards, or Article 4, District Standards, shall be processed as hardship variances by the ~~Zoning Board of Appeals~~ **Land Use Review Commission** pursuant to Division 2.10. Appeals of administrative/staff decisions shall be according to Division 2.11. PUD overlays shall be processed pursuant to Divisions 2.15, 4.29.

Applications to conduct an activity or develop within an area of state interest are addressed in Division 2.20 and Article 6.

(B) ***Overall Development Plan.***

- (1) *Purpose and Effect.* The purpose of the overall development plan is to establish general planning and development control parameters for projects that will be developed in phases with multiple submittals while allowing sufficient flexibility to permit detailed planning in subsequent submittals. Approval of an overall development plan does not establish any vested right to develop property in accordance with the plan.
- (2) *Applicability.* An overall development plan shall be required for any property which is intended to be developed over time in two (2) or more separate project development plan submittals. Refer to Division 2.3 for specific requirements for overall development plans.

(C) ***Project Development Plan and Plat.***

- (1) *Purpose and Effect.* The project development plan shall contain a general description of the uses of land, the layout of landscaping, circulation, architectural elevations and buildings, and it shall include the project development plan and plat (when such plat is required pursuant to Section 3.3.1 of this Code). Approval of a project development plan does not establish any vested right to develop property in accordance with the plan.
- (2) *Applicability.* Upon completion of the conceptual review meeting and after the Director has made written comments and after a neighborhood meeting has been held (if necessary), an application for project development plan review may be filed with the Director. If the project is to be developed over time in two (2) or more separate project development plan submittals, an overall development plan shall also be required. Refer to Division 2.4 for specific requirements for project development plans.

(D) ***Final Plan and Plat.***

- (1) *Purpose and Effect.* The final plan is the site specific development plan which describes and establishes the type and intensity of use for a specific parcel or parcels of property. The final plan shall include the final subdivision plat (when such plat is required pursuant to Section 3.3.1 of this Code), and if required by this Code or otherwise determined by the Director to be relevant or necessary, the plan shall also include the development agreement and utility plan and shall require detailed engineering and design review and approval. Building permits may be issued by the Building and

Zoning Director only pursuant to an approved final plan or other site specific development plan, subject to the provisions of Division 2.8.

- (2) *Applicability.* Application for a final plan may be made only after approval by the appropriate decision maker (Director for Type 1 review, or Planning and Zoning Board **Commission** for Type 2 review) of a project development plan, unless the project development and final plans have been consolidated pursuant to Section 2.2.3(B). An approved final plan shall be required for any property which is intended to be developed. No development shall be allowed to develop or otherwise be approved or permitted without an approved final plan. Refer to Division 2.5 for specific requirements for final plans.

(E) ***Site Plan Advisory Review.***

- (1) *Purpose and Effect.* The Site Plan Advisory Review 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. In addition, with respect to public and charter schools, the review also has as its purpose, as far as is feasible, that the proposed school facility conforms to the City's Comprehensive Plan.
- (2) *Applicability.* A Site Plan Advisory Review shall be applied to any public building or structure. For a public or charter school, the Planning and Zoning Board **Commission** shall review a complete Site Plan Advisory Review application within thirty (30) days (or such later time as may be agreed to in writing by the applicant) of receipt of such application under Section 22-32-124, C.R.S. For Site Plan Advisory Review applications under Section 31-23-209, C.R.S., such applications shall be reviewed and approved or disapproved by the Planning and Zoning Board **Commission** within sixty (60) days following receipt of a complete application.

Enlargements or expansions of public buildings, structures, schools and charter schools are exempt from the Site Plan Advisory review process if:

- (a) The change results in a size increase of less than twenty-five (25) percent of the existing building, structure or facility being enlarged, whether it be a principal or accessory use; and
- (b) The enlargement or expansion does not change the character of the building or facility.

Application for a Site Plan Advisory Review is subject to review by the Planning and Zoning Board **Commission** under the requirements contained in Division 2.16 of this Code.

(F) **PUD Overlay.**

- (1) Purpose and Effect. The purpose of the PUD Overlay is to provide an avenue for property owners with larger and more complex development projects to achieve flexibility in site design by means of customized uses, densities, and Land Use Code and non-Land Use Code development standards. In return for such flexibility, significant public benefits not available through traditional development procedures must be provided by the development. A PUD Master Plan is the written document associated with a PUD Overlay and the PUD Master Plan sets forth the general development plan and the customized uses, densities, and Land Use Code and non-Land Use Code development standards. An approved PUD Overlay overlays the PUD Master Plan entitlements and restrictions upon the underlying zone district requirements.
- (2) Applicability. A PUD Overlay is available to properties or collections of contiguous properties fifty (50) acres or greater in size. Refer to Divisions 2.15 and 4.29 for specific requirements and review of PUD Overlays and PUD Master Plans.

(G) **Areas and Activities of State Interest.**

- (1) Purpose and Effect. The areas and activities of state interest guidelines and regulations set forth in Article 6 are adopted pursuant to Section 24-65.1-101, et seq., C.R.S., and provide the City with the ability to review and regulate matters of state interest. A permit issued pursuant to Article 6 is required in order for a proposed development plan related to a designated activity or within a designated area of state interest to be constructed and operate.
- (2) Applicability. A permit to conduct a designated activity or to develop within a designated area of state interest within the City is required for all proposed development plans meeting the criteria set forth in Article 6 unless an exemption exists pursuant to Section 6.4.1 or a finding of negligible adverse impact is issued pursuant to Section 6.6.5.

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2.1.6 - Optional Pre-Application Review

(A) ***Optional City Council Pre-Application Review of Complex Development Proposals:***

A potential applicant for development other than a PUD Overlay may request that the City Council conduct a hearing for the purpose of receiving preliminary

comments from the City Council regarding the overall proposal in order to assist the proposed applicant in determining whether to file a development application or annexation petition. Only one (1) pre-application hearing pursuant to this Subsection (A) may be requested. The following criteria must be satisfied for such a hearing to be held:

- (a) The proposed development cannot have begun any step of the Common Development Review Procedures for Development Applications set forth in Article 2, Division 2.2.
- (b) The proposed application for approval of a development plan must require City Council approval of an annexation petition, an amendment to the City's Comprehensive Plan, or some other kind of formal action by the City Council, other than a possible appeal under this Land Use Code.
- (c) The City Manager must determine in writing that the proposed development will have a community-wide impact.

(B) *Optional Pre-Application PUD Overlay Proposal Review:*

This optional review is available to potential PUD applicants that have not begun any step of the Common Development Review Procedures for Development Applications set forth in Article 2, Division 2.2. Such review is intended to provide an opportunity for applicants to present conceptual information to the Planning and Zoning Board Commission for PUD Overlays between 50 and 640 acres in size, or to City Council for PUD Overlays greater than 640 acres in size, regarding the proposed development including how site constraints will be addressed and issues of controversy or opportunities related to the development. Applicants participating in such review procedure should present specific plans showing how, if at all, they intend to address any issues raised during the initial comments received from staff and affected property owners. In order for a pre-application hearing to be held, the Director must determine in writing that the proposed PUD will have a community-wide impact. Only one (1) pre-application hearing pursuant to this Subsection (B) may be requested.

(C) *Optional Pre-Application Area and Activity Proposal Review:*

A potential applicant to conduct a designated activity or develop within a designated area of state interest may request that the City Council conduct a hearing for the purpose of receiving preliminary comments from the City Council regarding the overall proposal in order to assist the proposed applicant. Only one (1) pre-application hearing pursuant to this Subsection (C) may be requested. The following criteria must be satisfied for such a hearing to be held:

- (a) The proposed development cannot have begun any step of the Common Development Review Procedures for Development Applications set forth in Article 2, Division 2.2.
- (b) The proposed application for a permit pursuant to Article 6 must require City Council approval of a permit for areas and activities of state interest.
- (c) The City Manager must determine in writing that the proposed development will have a community-wide impact.

(D) Notice and Hearing Procedure.

All preapplication hearings under above Subsections (A), ~~or (B)~~, or (C) of this provision will be held in accordance with the provisions contained in Steps (6), (7)(B) and (7)(C) of the Common Development Review Procedures, except that the signs required to be posted under Step (6)(B) shall be posted subsequent to the scheduling of the session and not less than fourteen (14) days prior to the date of the hearing. At the time of requesting the hearing, the applicant must advance the City's estimated costs of providing notice of the hearing. Any amounts paid that exceed actual costs will be refunded to the applicant.

(E) Input Non-Binding, Record.

The Planning and Zoning Board ~~Commission~~ or City Council as applicable pursuant to above Subsections (A), ~~or (B)~~, or (C) may, but shall not be required to, comment on the proposal. Any comment, suggestion, or recommendation made by any Planning and Zoning Board ~~Commission~~ or City Council member with regard to the proposal does not bind or otherwise obligate any City decision maker to any course of conduct or decision pertaining to the proposal. All information related to an optional review shall be considered part of the record of any subsequent development review related to all or part of the property that was the subject of the optional review.

Section 4. That Section 2.2.4 of the Land Use Code is hereby amended to read as follows:

2.2.4 - Step 4: Review Of Applications

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- (B) Specialized Consultants to Assist With Review.** As described in Section 2.2.3(D)(3), the City may retain the services of third-party consultants with specialized knowledge that the City requires to adequately evaluate whether an application is complete pursuant to above Subsection (A) or to assist in the review of a complete application, the costs of which must be paid by the applicant.

(B)(C) ***Processing of Incomplete Applications.*** Except as provided below, if a submittal is found to be insufficient, all review of the submittal will be held in abeyance until the Director receives the necessary material to determine that the submittal is sufficient. The development application shall not be reviewed on its merits by the decision maker until it is determined sufficient by the Director. Notwithstanding the foregoing, if an application has been determined to be incomplete because the information provided to the Director shows that a portion of the property to be developed under the application is not yet under the ownership and control of the applicant or developer, the Director may nonetheless authorize the review of such application and the presentation of the same to the decision maker, as long as:

- (1) the applicant, at the time of application, has ownership of, or the legal right to use and control, the majority of the property to be developed under the application;
- (2) the Director determines that it would not be detrimental to the public interest to accept the application for review and consideration by the decision maker; and
- (3) the applicant and developer enter into an agreement satisfactory in form and substance to the City Manager, upon consultation with the City Attorney, which provides that:
 - (a) until such time as the applicant has acquired full ownership and control of all property to be developed under the application, neither the applicant nor the developer will record, or cause to be recorded, in the office of the Larimer County Clerk and Recorder any document related to the City's review and approval of the application; and
 - (b) the applicant will indemnify and hold harmless the City and its officers, agents and assigns from any and all claims that may be asserted against them by any third party, claiming injury or loss of any kind whatsoever that are in any way related to, or arise from, the City's processing of the application.

The denial of an incomplete application that has been allowed to proceed to the decision maker under the provisions of this Section shall not cause a post denial re-submittal delay under the provisions of Paragraph 2.2.11(D)(9) for property that was not owned by the applicant or within the applicant's legal right to use and control at the time of denial of the application.

Section 5. That Section 2.2.6 of the Land Use Code is hereby amended to read as follows:

2.2.6 - Step 6: Notice

- (A) **Mailed Notice.** The Director shall mail written notice to the owners of record of all real property within eight hundred (800) feet (exclusive of public rights-of-way, public facilities, parks or public open space) of the property lines of the parcel of land for which the development is planned. Owners of record shall be ascertained according to the records of the Larimer County Assessor's Office, unless more current information is made available in writing to the Director prior to the mailing of the notices. If the development project is of a type described in the Supplemental Notice Requirements of subsection 2.2.6(D), then the area of notification shall conform to the expanded notice requirements of that Section. In addition, the Director may further expand the notification area. Formally designated representatives of bona fide neighborhood groups and organizations and homeowners' associations within the area of notification shall also receive written notice. Such written notices shall be mailed at least fourteen (14) days prior to the public hearing/meeting date. The Director shall provide the applicant with a map delineating the required area of notification, which area may be extended by the Director to the nearest streets or other distinctive physical features which would create a practical and rational boundary for the area of notification. The applicant shall pay postage and handling costs as established in the development review schedule.
- (B) **Posted Notice.** The real property proposed to be developed shall also be posted with a sign, giving notice to the general public of the proposed development. For parcels of land exceeding ten (10) acres in size, two (2) signs shall be posted. The size of the sign(s) required to be posted shall be as established in the Supplemental Notice Requirements of subsection 2.2.6(D). Such signs shall be provided by the Director and shall be posted on the subject property in a manner and at a location or locations reasonably calculated by the Director to afford the best notice to the public, which posting shall occur within fourteen (14) days following submittal of a development application to the Director.
- (C) **Published Notice.** Notice of the time, date and place of the public hearing/ meeting on the development application and the subject matter of the hearing shall be published in a newspaper of general circulation within the City at least seven (7) days prior to such hearing/meeting.
- (D) **Supplemental Notice Requirements.**

	<i>Minimum Notice Radius</i>	<i>Sign Size</i>
...	...	...
Area or activity of state interest.	1,000 feet in all directions of the location of a proposed development plan as determined by the	12 square feet, however, the Director may require an increased

	Director, this distance shall apply to mailed notice for neighborhood meetings, appeals of Director FONAI decisions, Planning and Zoning Commission permit recommendations, and City Council permit hearings	number of signs depending upon the size and configuration of the proposed development plan
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(E) The following shall not affect the validity of any hearing, meeting or determination by the decision maker:

- (1) The fact that written notice was not mailed as required under the provision of this Section.
- (2) The fact that written notice, mailed as required under the provision of this Section, was not actually received by one (1) or more of the intended recipients.
- (3) The fact that signage, posted in compliance with the provision of this Section, was subsequently damaged, stolen or removed either by natural causes or by persons other than the person responsible for posting such signage or his or her agents.

Section 6. That Section 2.2.12 of the Land Use Code is hereby amended to read as follows:

2.2.12 - Step 12: Appeals/Alternate Review

- (A) *Appeals.* Appeals of any final decision of a decision maker under this Code shall be only in accordance with Chapter 2, Article II, Division 3 of the City Code, unless otherwise provided in this Section or Division 2.
- (B) *Alternate Review.* Despite the foregoing, if the City is the applicant for a development project, there shall be no appeal of any final decision regarding such development project to the City Council. In substitution of an appeal of a development project for which the City is the applicant, the City Council may, by majority vote, as an exercise of its legislative power and in its sole discretion, overturn or modify any final decision regarding such project, by ordinance of the City Council. Any Councilmember may request that the City Council initiate this exercise of legislative power but only if such request is made in writing to the City Clerk within fourteen (14) days of the date of the final decision of the Planning and Zoning Board-Commission. City Council shall conduct a hearing prior to the

adoption of the ordinance in order to hear public testimony and receive and consider any other public input received by the City Council (whether at or before the hearing) and shall conduct its hearing in the manner customarily employed by the Council for the consideration of legislative matters. When evaluating City projects under alternate review, the City Council may, in its legislative discretion, consider factors in addition to or in substitution of the standards of this Land Use Code.

- (C) *Appeal of Minor Amendment, Changes of Use, and Basic Development Review Decisions by the Director.* The Director's final decision on a minor amendment or change of use application pursuant to Section 2.2.10(A) or basic development review application pursuant to Division 2.18 may be appealed to the Planning and Zoning Board-Commission as follows:

- (1) *Parties Eligible to File Appeal.* The following parties are eligible to appeal the Director's final decision on a minor amendment, change of use, or basic development review application:
 - (a) The applicant that submitted the application subject to the Director's final decision;
 - (b) Any party holding an ownership or possessory interest in the real or personal property that was the subject of the final decision;
 - (c) Any person to whom or organization to which the City mailed notice of the final decision;
 - (d) Any person or organization that provided written comments to the appropriate City staff for delivery to the Director prior to the final decision; and
 - (e) Any person or organization that provided written comments to the appropriate City staff for delivery to the decision maker prior to the final decision on the project development plan or final plan being amended or provided spoken comments to the decision maker at the public hearing where such final decision was made.
- (2) *Filing Notice of Appeal.* An appeal shall be commenced by filing a notice of appeal with the Director within fourteen (14) calendar days after the date the written final decision is made that is the subject of the appeal. Such notice of appeal shall be on a form provided by the Director, shall be signed by each person joining the appeal ("appellant"), and shall include the following:
 - (a) A copy of the Director's final decision being appealed;

- (b) The name, address, email address, and telephone number of each appellant and a description why each appellant is eligible to appeal the final decision pursuant to Subsection (C)(1) above;
 - (c) The specific Land Use Code provision(s) the Director failed to properly interpret and apply and the specific allegation(s) of error and/or the specific Land Use Code procedure(s) not followed that harmed the appellant(s) and the nature of the harm; and
 - (d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.
- (3) *Scheduling of Appeal.* A public hearing shall be scheduled before the Planning and Zoning ~~Board~~ **Commission** within sixty (60) calendar days of a notice of appeal being deemed complete unless the Planning and Zoning ~~Board~~ **Commission** adopts a motion granting an extension of such time period.
- (4) *Notice.* Once a hearing date before the Planning and Zoning ~~Board~~ **Commission** has been determined, the Director shall mail written notice pursuant to Section 2.2.6(A). Notice requirements set forth in Section 2.2.6(B)-(D) shall not apply. The mailed notice shall inform recipients of:
- (a) The subject of the appeal;
 - (b) The date, time, and place of the appeal hearing;
 - (c) The opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning ~~Board~~ **Commission**; and
 - (d) How the notice of appeal can be viewed on the City's website.
- (5) *Planning and Zoning ~~Board~~ **Commission** Hearing and Decision.*
- (a) The Planning and Zoning ~~Board~~ **Commission** shall hold a public hearing pursuant to Section 2.2.7 to decide the appeal, and City staff shall prepare a staff report for the Planning and Zoning ~~Board~~ **Commission**. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Planning and Zoning ~~Board~~ **Commission** for its consideration at the hearing.

- (b) The hearing shall be considered a new, or *de novo*, hearing at which the Planning and Zoning Board-Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning Board-Commission shall not give deference to the Director's final decision being appealed, and the applicant shall have the burden of establishing that the application complies with all relevant Land Use Code provisions and should be granted. The applicant, appellant or appellants, members of the public, and City staff may provide information to the Planning and Zoning Board-Commission for its consideration at the appeal hearing that was not provided to the Director for his or her consideration in making the final decision being appealed.
- (c) The Planning and Zoning Board-Commission shall review the application that is the subject of the appeal for compliance with all applicable Land Use Code standards and may uphold, overturn, or modify the decision being appealed at the conclusion of the hearing and may impose conditions in the same manner as the Director pursuant to Section 2.2.10(A) and Division 2.18. The Planning and Zoning Board-Commission decision shall constitute a final decision appealable to City Council pursuant to Section 2.2.12(A).

(D) *Appeal of FONAI Determination.* The Director's determination pursuant to Section 6.5.5 that a proposed development plan would have negligible adverse impact and would not require a permit pursuant to Article 6, or that a proposed development plan would cause more than a negligible adverse impact and must obtain a permit pursuant to Article 6, may be appealed to the Planning and Zoning Commission as follows:

- (1) *Parties Eligible to File Appeal.* The applicant is the only party eligible to file an appeal of the Director's determination that a proposed development plan would cause more than a negligible adverse impact and, therefore, a permit is required pursuant to Article 6.

Any person is eligible to file an appeal of the Director's finding that a proposed development plan would cause only a negligible adverse impact and would not require a permit pursuant to Article 6.

- (2) *Filing Notice of Appeal.* An appeal shall be commenced by filing a notice of appeal with the Director within fourteen (14) calendar days after the date of the written final determination on a FONAI application. Such notice of appeal shall be on a form provided by the Director, shall be signed by each person joining the appeal ("appellant"), and shall include the following:

- (a) A copy of the Director's determination being appealed;

- (b) The name, address, email address, and telephone number of each person joining the appeal;
- (c) The specific reasons why the appellant believes the Director's determination is incorrect; and
- (d) In the case of an appeal filed by more than one (1) person, the name, address, email address and telephone number of one (1) such person who shall be authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant.

The Director shall reject any notice of appeal that is not timely filed, does not contain the information set forth in (a) – (d) above, or is not filed by a party with standing to file an appeal. The decision to reject a notice of appeal is not subject to appeal. Should multiple notices of appeal be filed, a single hearing shall be held.

- (3) *Scheduling of Appeal.* A public hearing shall be scheduled before the Planning and Zoning Commission as soon as practicable but not later than within sixty (60) calendar days of a complete notice of appeal being filed. In the instance that multiple notices of appeal are filed, the sixty days shall be counted from the date the first complete notice of appeal is filed.

- (4) *Notice.* Once a hearing date has been determined, the Director shall mail written notice to the appellant and all parties to whom notice of the decision was mailed pursuant to Section 6.6.5(E)(3). The mailed notice shall inform recipients of:

- (a) The subject of the appeal;
- (b) The date, time, and place of the appeal hearing;
- (c) The opportunity of the recipient and members of the public to appear at the hearing and address the Planning and Zoning Commission; and
- (d) How the notice of appeal can be viewed on the City's website.

- (5) *Planning and Zoning Commission Hearing and Decision.*

- (a) The Planning and Zoning Commission shall hold a public hearing pursuant to Section 2.2.7 to decide the appeal with appellant being substituted for applicant in Section 2.2.7. In any appeal of a Director finding that a proposed development project would have a negligible adverse impact and is not required to obtain a permit, the procedure

set forth in Section 2.2.7 shall be modified to provide the FONAI applicant an opportunity equal to that of the appellant to address the Commission and respond to evidence and arguments raised by the appellant and members of the public. City staff shall prepare a staff report for the Commission. The notice of appeal, copy of the Director's final decision, and the application and all application materials submitted to the Director shall be provided to the Commission for its consideration at the hearing.

(b) The hearing shall be considered a new, or *de novo*, hearing at which the Planning and Zoning Commission shall not be restricted to reviewing only the allegations of error listed in the notice of appeal, the Planning and Zoning Commission shall not give deference to the Director's decision being appealed, and the burden shall be on the appellant to establish why the appeal should be granted. The applicant, appellant, members of the public, and City staff may provide information to the Planning and Zoning Commission for its consideration at the appeal hearing that was not provided to the Director for their consideration in making the decision being appealed.

(c) The Planning and Zoning Commission shall review the application that is the subject of the appeal for compliance with all applicable criteria set forth in Section 6.6.5(A) and shall uphold or overturn the Director's determination. The Planning and Zoning Commission decision shall constitute a final decision appealable to City Council pursuant to Section 2.2.12(A).

Section 7. That Section 2.17 of the Land Use Code is hereby amended to read as follows:

DIVISION 2.17 - CITY PROJECTS

Development projects for which the City is the applicant shall be processed in the manner described in this Land Use Code, as applicable, but shall be subject to review by the Planning and Zoning Board Commission in all instances, except for permits pursuant to Article 6 in which City Council is the decision maker, despite the fact that certain uses would otherwise have been subject to administrative review.

Section 8. That Article II of the Land Use Code is hereby amended by the addition of a new Division 2.20 which reads in its entirety as follows:

DIVISION 2.20 - AREAS AND ACTIVITIES OF STATE INTEREST

(A) **Purpose.** Pursuant to Colorado Revised Statutes Section 24-65.1-101, et. seq, the City is empowered to designate certain activities and areas to be matters of state

interest and to regulate designated activities and areas through adopted guidelines and regulations. The Land Use Code areas and activities of state interest provisions in Article 6 set forth procedures and requirements for the designation of activities and areas as matters of state interest, procedures for requesting a permit to conduct a designated activity or develop in a designated area, and criteria that must be met in order for a permit to be issued.

- (B) **Applicability.** These areas and activities of state interest provisions shall apply to all proceedings and decisions concerning identification, designation, and regulation of any development in any area of state interest or any activity of state interest that has been or may hereafter be designated by the City Council. To the extent a proposed development plan could be reviewed under another Land Use Code process, such plan shall be reviewed under Article 6 unless an exemption exists pursuant to Section 6.4.1 or the Director issues a finding of negligible adverse impact (“FONAI”) pursuant to Section 6.6.5. Proposed development plans for which the Planning and Zoning Commission denied a Site Plan Advisory Review application prior to the effective date of Article 6 shall be subject to such regulations unless an exemption exists or a FONAI is issued.

A permit to conduct a designated activity or develop in an area of state interest may be issued for a proposed development plan that is to be located in one or more zone districts regardless of whether the zone district or districts list the use proposed by the proposed development plan as an allowed use or otherwise prohibit such use.

(C) **Process.**

- (1) **Step 1** (Conceptual Review): Applicable.

(Pre-Application Area or Activity Review): The Director shall require an additional pre-application areas and activities review pursuant to Section 6.6.3 for any proposed development plan that the Director determines may require a permit pursuant to Article 6. The purposes of the pre-application area or activity review are described in Section 6.6.3(A). The Director may retain the services of third-party consultants pursuant to the terms of Land Use Code Section 2.2.3(D)(3) to assist the Director during the pre-application areas and activities review.

- (2) **Step 2** (Neighborhood Meeting): Applicable.

- (3) **Step 3** (Development Application Submittal): Applicable. The simultaneous processing of development applications submitted in association with an application for a permit to conduct a designated activity or develop in an area of state interest is addressed in Section 6.6.9, and combined applications for a permit to conduct multiple activities or develop in multiple areas of state interest is addressed in Section 6.6.10.

(4) **Step 4** (Review of Application): Applicable except that Section 6.6.7 shall substitute for Land Use Code Section 2.2.4(A).

(5) **Step 5** (Staff Report): Applicable.

(6) **Step 6** (Notice): Applicable with particular timing for published and mailed notice as set forth in Section 6.6.11.

(7) **Step 7** (Public Hearing):

7(A) (Decision Maker): Not applicable and in substitution therefor, City Council is the decision maker on permits pursuant to Article 6 after receiving a Planning and Zoning Commission recommendation.

Steps 7(B) (Conduct of Public Hearing), **7(C)** (Order of Proceedings at Public Hearing):

Applicable to Planning and Zoning Commission hearings where a recommendation on a permit application will be made.

Not applicable to City Council hearings where a decision on a permit application will be made. City Council shall adopt into its rules of procedure a procedure for conducting such hearings.

Applicable to appeals of Director FONAI determinations to the Planning and Zoning Commission as modified pursuant to Section 2.2.12(D)(5).

Not applicable to appeals to City Council of Planning and Zoning Commission decisions on appeals of Director FONAI decisions. The procedures set forth in the Code of the City of Fort Collins Chapter 2, Article II, Division 3 shall apply.

7(D) (Decision and Findings): Not applicable and in substitution therefor, see Section 6.6.5 regarding Director FONAI determinations, Section 2.2.12(D) regarding appeals of Director FONAI decisions, and Section 6.6.11 regarding Planning and Zoning Commission recommendations on permits and City Council permit decisions.

7(E) (Notification to Applicant), **7(F)** (Record of Proceedings), **7(G)** (Recording of Decisions and Plat): *Applicable.*

(8) **Step 8** (Standards): Applicable except that the applicable standards that must be met are set forth in Article 6.

(9) **Step 9** (Conditions of Approval): Applicable to Planning and Zoning Commission recommendations on permit applications and City Council decisions on permit applications as modified pursuant to Section 6.6.14.

(10) **Step 10** (Amendments): Not applicable and in substitution thereof, the requirements of Sections 6.12.3 and 6.12.4 shall apply

(11) **Step 11** (Lapse): Only 2.2.11(A) is applicable and approved permits for areas and activities of state interest are not eligible for vested rights pursuant to the Land Use Code. Sections 6.6.14 and 6.11.1 require that the permittee make substantial steps toward initiating and completing the proposed development plan or the permit may be subject to revocation.

(12) **Step 12** (Appeals): Applicable pursuant to Section 2.2.12(D).

Section 9. That the definitions of “Development”, “Development application”, and “Development plan” contained in Section 5.1.2 of the Land Use Code are hereby amended to read as follows:

Development shall mean the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or, except as is authorized in Section 1.4.7, the dividing of land into two (2) or more parcels.

(1) *Development* shall also include:

- (a) Any construction, placement, reconstruction, alteration of the size, or material change in the external appearance of a structure on land;
- (b) Any change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on a tract of land or a material increase in the intensity and impacts of the development;
- (c) Any change in use of land or a structure;
- (d) Any alteration of a shore or bank of a river, stream, lake, pond, reservoir or wetland;
- (e) The commencement of drilling (except to obtain soil samples), mining, stockpiling of fill materials, filling or excavation on a parcel of land;
- (f) The demolition of a structure;
- (g) The clearing of land as an adjunct of construction;
- (h) The deposit of refuse, solid or liquid waste, or fill on a parcel of land;
- (i) The installation of landscaping within the public right-of-way, when installed in connection with the development of adjacent property;

- (j) The construction of a roadway through or adjoining an area that qualifies for protection by the establishment of limits of development.
- (2) Development shall not include:
- (a) Work by the City, or by the Downtown Development Authority (if within the jurisdictional boundary of the Downtown Development Authority and if such work has been agreed upon in writing by the City and the Authority), or work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way, or on land adjacent to the right-of-way if such work is incidental to a project within the right-of-way. Notwithstanding, such work shall be considered development if it is determined to require a permit pursuant to Land Use Code Article 6 Guidelines and Regulations for Areas and Activities of State Interest;
 - (b) Work by the City or any public utility for the purpose of restoring or stabilizing the ecology of a site, or for the purpose of inspecting, repairing, renewing or constructing, on public easements or rights-of-way, any mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like; provided, however, that this exemption shall not include work by the City or a public utility in constructing or enlarging mass transit or railroad depots or terminals or any similar traffic-generating activity. Notwithstanding, such work shall be considered development if it is determined to require a permit pursuant to Land Use Code Article 6, Guidelines and Regulations for Areas and Activities of State Interest;
 - (c) Work by any person to restore or enhance the ecological function of natural habitats and features, provided that such work does not result in adverse impacts to rivers, streams, lakes, ponds, wetlands other natural habitats or features, or adjacent properties as determined by the Director; and provided that all applicable State, Federal, and local permits or approvals have been obtained;
 - (d) The maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure;
 - (e) The use of any land for the purpose of growing plants, crops, trees and other agricultural or forestry products; for raising or feeding livestock (other than in feedlots); for other agricultural uses or purposes; or for the delivery of water by ditch or canal to agricultural uses or purposes, provided none of the above creates a nuisance, and except that an urban agriculture license is required in accordance with Section 3.8.31 of this Code;

- (f) A change in the ownership or form of ownership of any parcel or structure;
 - (g) The creation or termination of rights of access, easements, covenants concerning development of land, or other rights in land;
 - (h) The installation, operation, maintenance, or upgrade of a small cell or broadband facility by a telecommunications provider principally located within a public highway as the terms small cell facility, telecommunications provider, and public highway are defined in Section 38-5.5-102, C.R.S. The regulation of such activities is addressed in Chapter 23 of the Code of the City of Fort Collins.
- (3) When appropriate in context, development shall also mean the act of developing or the result of development.

Development application shall mean any application or request submitted in the form required by the Land Use Code and shall include only applications for an overall development plan, a PUD Overlay, a project development plan, a final plan, a basic development review, a Building Permit, a modification of standards, amendments to the text of this Code or the Zoning Map, a hardship variance, ~~or an appeal from administrative decisions prescribed in Article 2,~~ a minor or major plan amendment, or a permit application pursuant to the Article 6 areas and activities of state interest provisions.

...

Development plan shall mean an application submitted to the City for approval of a permitted use which depicts the details of a proposed development. *Development plan* includes an overall development plan, a project development plan, a final plan, a basic development review, and/or an amendment of any such plan. A PUD Overlay is also considered to be a *development plan* even though the PUD Overlay may request uses that are not permitted in the applicable underlying zone district. Additionally, an application for a permit pursuant to the Article 6 areas and activities of state interest provisions is considered a development plan even though the application may propose uses that are not permitted in the applicable zone district or districts.

...

Section 10. That the Land Use Code is hereby amended by the addition of a new Article 6 which reads in its entirety as follows:

ARTICLE 6
GUIDELINES AND REGULATIONS FOR
AREAS AND ACTIVITIES OF STATE INTEREST

Division 6.1 Introductory and General Provisions

- 6.1.1 Title and Citation
- 6.1.2 Purpose and Findings; Scope
- 6.1.3 Authority
- 6.1.4 Applicability
- 6.1.5 Permit Required; Allowed Use Not Required; Stay On Issuance of Easements and Other Permits
- 6.1.6 Relationship of Regulations to other City, State and Federal Requirements
- 6.1.7 Maps
- 6.1.8 Severability
- 6.1.9 Definitions

Division 6.2 Procedure for Designation of Matters of State Interest

- 6.2.1 City Council to Make Designations
- 6.2.2 Public Hearing Required
- 6.2.3 Notice of Public Hearing; Publication
- 6.2.4 Matters to be Considered at Designation Hearing
- 6.2.5 Adoption of Designation and Regulations
- 6.2.6 Effect of Notice of Designation – Moratorium until Final Determination
- 6.2.7 Mapping Disputes

Division 6.3 Designated Activities of State Interest

- 6.3.1 Designated Areas and Activities of State Interest

Division 6.4 Exemptions

- 6.4.1 Exemptions

Division 6.5 Permit Authority

- 6.5.1 Permit Authority Established

Division 6.6 Permit Application Procedures

- 6.6.1 Preliminary Design Review
- 6.6.2 Application Fee; Financial Security Waiver
- 6.6.3 Pre-Application Area or Activity Review
- 6.6.4 Neighborhood Meeting
- 6.6.5 Determination of Applicability of Regulations- FONAI

- 6.6.6 Application Submission Requirements
- 6.6.7 Determination of Completeness
- 6.6.8 Referral Agencies
- 6.6.9 Simultaneous Processing of Associated Development Applications
- 6.6.10 Combined Application for Multiple Activities or Development in More than One Area of State Interest.
- 6.6.11 Permit Decision Making Procedures
- 6.6.12 Conduct of Permit Hearings
- 6.6.13 Approval or Denial of Permit Application
- 6.6.14 Issuance of Permit, Conditions

Division 6.7 Common Review Standards

- 6.7.1 Review Standards for All Applications

Division 6.8 Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extensions of Such Systems

- 6.8.1 Applicability
- 6.8.2 Purpose and Intent
- 6.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

Division 6.9 Site Selection of Arterial Highways and Interchanges and Collector Highways

- 6.9.1 Applicability
- 6.9.2 Purpose and Intent
- 6.9.3 Specific Review Standards Specific Review Standards for Arterial Highway, Interchange or Collector Highway Projects

Division 6.10 Financial Security

- 6.10.1 Financial Security

Division 6.11 Suspension or Revocation of Permits

- 6.11.1 Suspension or Revocation of Permits

Division 6.12 Review, Renewal, Amendment, Transfer

- 6.12.1 Annual Review; Progress Reports
- 6.12.2 Permit Renewal
- 6.12.3 Permit Amendment
- 6.12.4 Minor Revision Not Constituting a Material Change
- 6.12.5 Transfer of Permits
- 6.12.6 Inspection

Division 6.13 Enforcement

6.13.1 Enforcement

DIVISION 6.1 INTRODUCTORY AND GENERAL PROVISIONS

- 6.1.1 Title and Citation**
- 6.1.2 Purpose and Findings; Scope**
- 6.1.3 Authority**
- 6.1.4 Applicability**
- 6.1.5 Permit Required; Allowed Use Not Required; Stay On Issuance of Easements and Other Permits**
- 6.1.6 Relationship of Regulations to other City, State and Federal Requirements**
- 6.1.7 Maps**
- 6.1.8 Severability**
- 6.1.9 Definitions**

6.1.1 Title and Citation

The various regulations constituting Divisions 1 through 13 of Article 6 are titled and may be cited as the “Guidelines and Regulations for Areas and Activities of State Interest of the City of Fort Collins,” or “Regulations.”

6.1.2 Purpose and Findings

(A) **Purpose.** The general purpose of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S. The specific purposes are to:

- (1) Protect public health, safety, welfare, the environment, and historic, cultural, and wildlife resources;
- (2) Implement the vision and policies of the City’s Comprehensive Plan;
- (3) Ensure that infrastructure, growth and development in the City occur in a planned and coordinated manner;
- (4) Protect natural, historic, and cultural resources; protect and enhance natural habitats and features of significant ecological value as defined in Section 3.4.1; protect air and water quality; reduce greenhouse gas emissions and enhance adaptation to climate change;
- (5) Promote safe, efficient, and economic use of public resources in developing and providing community and regional infrastructure, facilities, and services;

- (6) Regulate land use on the basis of environmental, social and financial impacts of proposed development on the community and surrounding areas; and
- (7) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, resources and other assets.

(B) Findings. The City Council of the City of Fort Collins finds that:

- (1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S., have been followed in adopting these Regulations;
- (2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within the City;
- (3) These Regulations are necessary to protect the public health, safety, welfare, the environment, and historic, cultural and wildlife resources;
- (4) These Regulations apply to the entire area within the incorporated municipal boundaries of the City; and
- (5) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the City Council.

6.1.3 Authority

These Regulations are authorized by, inter alia, Fort Collins City Charter Article I, Section 4, Colorado Constitution Article XX, and Section 24-65.1-101, et seq., C.R.S.

6.1.4 Applicability

These Regulations shall apply to all proceedings and decisions concerning identification, designation, and regulation of any development in any area of state interest or of any activity of state interest that has been or may hereafter be designated by the City Council.

- (A) To the extent a development plan could be reviewed under these Regulations and also as a Site Plan Advisory Review, Overall Development Plan, Project Development Plan, Final Plan, Basic Development Review, or Minor or Major Amendment, or other site-specific development plan, such development plan shall only be reviewed under these Regulations unless the Director issues a FONAI pursuant to Section 6.6.5 or an exemption as set forth in Section 6.4.1 applies, in which case the development plan shall instead be reviewed under the other applicable review process.
- (B) Development plans that have completed Site Plan Advisory Review pursuant to the Land Use Code prior to the effective date of these Regulations and been denied by the Planning and Zoning Commission shall be subject to these Regulations unless a FONAI is issued pursuant to Section 6.6.5 or an exemption applies pursuant to Section 6.4.1.

(C) Certain work exempt from the definition of development set forth in Article 5 may be subject to these Regulations as stated in the definition of development and these Regulations.

(D) City Council has designated as an activity of state interest subject to these Regulations, the Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and the Major Extension of Existing Domestic Water and Sewage Treatment Systems. Definitions for major new domestic water systems and major new sewage treatment systems and major extensions of each are set forth in Section 6.1.10.

(E) City Council has also designated as an activity of state interest subject to these Regulations, the Site Selection of Arterial Highways and Interchanges and Collector Highways. Definitions for arterial highways, interchanges and collector highways are set forth in Section 6.1.10.

6.1.5 Permit Required; Allowed Use Not Required; Stay On Issuance of Easements and Other Permits

(A) Permit Required.

Other than as stated in Sections 6.1.4, 6.4.1, and 6.6.5, no person may conduct a designated activity of state interest or develop in a designated area of state interest within the City without first obtaining a permit or a permit amendment under these Regulations.

(B) Allowed Use in Zone District Not Required.

(1) Proposed development plans subject to these Regulations shall not be considered as an allowed use in any zone district unless a permit has been issued pursuant to these Regulations. However, as described in Section 6.4.1(A), any fully constructed and operating project or facility that was lawfully developed under prior law but would be subject to these Regulations if it were currently proposed may continue to operate pursuant to Division 1.5 as a nonconforming use or structure.

(2) A permit pursuant to these Regulations may be issued for a development plan that is to be located in one or more zone districts regardless of whether the zone district or districts list the use proposed by the development plan as an allowed use or otherwise prohibit such use.

(C) Stay on Issuance of Easements and Other Permits.

No easements on City-owned real property and no permits issued by the City other than under these Regulations, including but not limited to flood plain and right-of-way encroachment permits, shall be granted for any development plan subject to these Regulations without such development plan having first obtained a permit pursuant to these Regulations or as may otherwise allowed under these Regulations.

6.1.6 Relationship of Regulations to Other City, State and Federal Requirements

- (A) Whenever these Regulations are found to be inconsistent with any other Land Use Code provision, the more stringent standard or requirement shall control.
- (B) In the event these Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, C.R.S., the statutory criteria shall control.
- (C) In the event these Regulations are found to be more stringent than the statutory criteria for administration of matter of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these Regulations shall control pursuant to the authority of Section 24-65.1-402 (3), C.R.S.
- (D) Unless otherwise specified in these Regulations, these Regulations are intended to be applied in addition to, and not in lieu of, any other City regulations or policies, including, without limitation, the Land Use Code, Natural Areas Easement Policy, and regulations regarding flood plain and encroachment permits as set forth in the Code of the City of Fort Collins, all as currently in effect or hereafter amended.
- (E) Permit requirements included in these Regulations shall be in addition to and in conformance with all applicable local, state, and federal water quality and air quality, and environmental laws, rules, and regulations.
- (F) Review or approval of a development plan by a federal or state or local agency does not substitute for a permit under these Regulations. Any applicant for a permit under these Regulations that is also subject to the regulations of other agencies may request in writing that the City application and review process be coordinated with that of the other agency or agencies. If practicable, the Director, in their discretion, may attempt to eliminate redundant application submittal requests and may coordinate City review of the application with that of other agencies as appropriate. To the extent the Director determines that the City's authority is preempted with regards to any requirement under these Regulations, such requirement shall not be applicable to the proposed development plan to the extent of the preemption.
- (G) These Regulations shall not be construed as modifying or amending existing laws or court decrees with respect to the determination and administration of water rights. To the extent the Director determines that any requirement under these Regulations would modify or amend existing laws or court decrees with respect to the determination and administration of water rights, such requirement shall not be applicable to the development plan to the extent of the modification or amendment of existing laws or court decrees.

6.1.7 Maps

- (A) Each map referred to in designations and regulations for any particular matter of state interest adopted by the City Council is deemed adopted therein as if set out in full.

(B) Maps referred to in any such designations and regulations shall be available for inspection in the offices of the Community Development and Neighborhood Services Department.

6.1.8 Severability

If any division, section, clause, provision, or portion of these Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

6.1.9 Definitions

The words and terms used in these Regulations shall have the meanings set forth below subject to Section 1.4.9 regarding the rules of construction for text. The definitions set forth below are specifically applicable to this Article 6 and other Land Use Code provisions referencing Article 6, including Division 2.20, and are not otherwise generally applicable to the Land Use Code.

Adequate security shall mean such funds or funding commitments, whether in the form of negotiable securities, letters of credit, bonds or other instruments or guarantees, as are deemed sufficient, in the Director's discretion, and in a form approved by the City Attorney, to guarantee performance of the act, promise, permit condition or obligation to which it pertains.

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.

Aquifer recharge area shall mean any area where surface water may infiltrate to a water-bearing stratum of permeable rock, sand or gravel. This definition also applies to wells used for disposal of wastewater or toxic pollutants.

Arterial highway shall mean any limited access highway that is part of the federal-aid interstate system, any limited access highway constructed under the supervision of the Colorado Department of Transportation, or any private toll road constructed or operated under the authority of a private toll road company. Arterial highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

Collector highway shall mean a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers, and constructed under guidelines and standards established by, or under the supervision of, the Colorado Department of Transportation. Collector highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

Collector sewer shall mean a network of pipes and conduits through which sewage flows to an interceptor main and/or a sewage treatment plant.

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.

Designation shall mean only that legal procedure specified by Section 24-65.1-401, et seq., C.R.S., and carried out by the City Council.

Disproportionately impacted community or DIC shall mean a community that is in a census block group where the proportion of households that are low income, that identify as minority, or that are housing cost-burdened is greater than 40% as such terms are defined in Section 24-4-109(2)(b)(II), C.R.S., as amended.

Domestic water and sewage treatment system shall mean a wastewater treatment facility, water distribution system, or water treatment facility, as defined in Section 25-9-102(5), (6) and (7), C.R.S., and any system of pipes, structures and facilities through which wastewater is collected for treatment.

FONAI shall mean a finding of negligible adverse impact pursuant to Section 6.6.5.

High priority habitat shall mean habitat areas identified by City Natural Areas or Colorado Parks and Wildlife where measures to avoid, minimize, and mitigate adverse impacts to wildlife have been identified to protect breeding, nesting, foraging, migrating, or other uses by wildlife. Maps showing, and spatial data identifying, the individual and combined extents of the high priority habitats are provided by Colorado Parks and Wildlife and City Natural Areas.

Highways shall mean state and federal highways.

Historic and cultural resource shall mean a site, structure, or object, including archeological features, located on a lot, lots, or area of property and is (1) designated as a Fort Collins landmark; (2) a contributing resource to a designated Fort Collins landmark district; (3) designated on the State Register of Historic Properties or National Register of Historic Places; or (4) determined to be eligible for designation as a Fort Collins landmark.

Impact area shall mean the geographic areas within the City, including the development site, in which any adverse impacts are likely to be caused by the proposed development plan.

Interceptor main shall mean a pipeline that receives wastewater flows from collector sewers to a wastewater treatment facility or to another interceptor line or meeting other requirements of the Colorado Department of Public Health and Environment to be classified as an interceptor.

Interchange shall mean the intersection of two or more highways, roads or streets, at least one of which is an arterial highway or toll road where there is direct access to and from the arterial highway or toll road.

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 one or more of the following criteria:

(a) Transmission lines greater than 15" diameter pipe and 1,320 linear feet in the aggregate for the proposed development plan; or

(b) Will require a new easement 30-feet or greater in width and 1,320 linear feet in length in the aggregate for the proposed development plan.

Major new domestic water system shall mean:

(1) 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; or

(2) 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 that will be used directly or by trade, substitution, augmentation, or exchange for water that will be used for human consumption or household use;

And all or part of a system described in (1) or (2) above meets one or more of the following criteria:

(a) Distribution and transmission lines greater than 12" diameter pipe and 1,320 linear feet in the aggregate for the proposed development plan; or

(b) Will require a new easement of 30-feet or greater in width and 1,320 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 extension of an existing domestic water treatment system shall mean the expansion of an existing domestic water treatment plant or capacity for storage that will result in a material change, or the extension or upgrade of existing transmission mains, distribution mains, or new pump stations that will result in a material change. Major extension of an existing domestic water treatment system shall exclude the following:

(1) Any maintenance, repair, adjustment;

- (2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same easement;
- (3) Expanding any existing easement to a total width of 30-feet or less and for a distance of 1,320 linear feet or less; or
- (4) Any facility or pump station or storage tank that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

Major extension of an existing sewage treatment system shall mean any modification of an existing wastewater treatment plant or lift station that will result in a material change, or any extension or upgrade of existing interceptor main or collector sewer that will result in a material change. Major extension of an existing sewage treatment system shall exclude the following:

- (1) Any maintenance, repair, adjustment;
- (2) Existing pipeline or the relocation, or enlargement of an existing pipeline within the same easement;
- (3) Expanding any existing easement to a total width of 30-feet or less and for a distance of 1,320 linear feet or less; or
- (4) Any facility or lift station that does not increase the rated capacity from the Colorado Department of Public Health and Environment.

Material change shall mean any change in a development plan approved under these Regulations which significantly expands the scale, magnitude, or nature of the approved development plan or the adverse impacts considered by the Permit Authority in approval of the original permit.

Matter of state interest shall mean an area of state interest or an activity of state interest or both.

Mitigation shall mean avoiding an adverse impact or minimizing impacts by limiting the degree, magnitude, or location of the action or its implementation.

Natural features shall mean land area and processes present in or produced by nature, including, but not limited to, soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, wildlife, and view corridors which present vistas to mountains and foothills, water bodies, open spaces and other regions of principal environmental importance, provided that such natural features are identified on the City's Natural Habitats and Features Inventory Map.

Permit shall mean a permit issued under these Regulations to conduct and develop an activity of state interest or to engage in development in an area of state interest, or both.

Permit Authority shall mean the City Council or, with respect to matters delegated by these Regulations, the Director and the Planning and Zoning Commission, as established and further described in Section 6.5.1.

Site selection of arterial highways and interchanges and collector highways shall mean the determination of a specific corridor or facility location which is made at the conclusion of the corridor location studies in which:

- (1) Construction of an arterial highway, interchange, or collector highway is proposed; or
- (2) Expansion or modification of an existing arterial highway, interchange or collector highway is proposed that would result in either (a) or (b), or both as follows:
 - (a) An increase in road capacity by at least one (1) vehicle lane through widening or alternative lane configuration.
 - (b) Expansion or modification of an existing interchange or bridge.

Transmission main shall mean a domestic water supply system's line that is designed to transport raw or treated water from a water source to a water treatment plant, storage facility or distribution systems.

Treatment System shall mean either, or both, the water distribution system and wastewater collection system.

Wastewater collection system means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility. The term is defined in Section 25-9-102(4.9), C.R.S., and as amended.

Wastewater treatment plant shall mean a facility or group of units used for treatment of industrial or domestic wastewater or the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units discharges into state waters. Wastewater treatment plant specifically excludes individual wastewater disposal systems such as septic tanks or leach fields.

Water distribution main shall mean a domestic water supply system's pipeline that is designed to transport treated water from a transmission main to individual water customers through service laterals.

Water distribution system shall mean a network of pipes and conduits through which water is piped for human consumption or a network of pipes and conduits through which water is piped in exchange or trade for human consumption.

Water diversion shall mean removing water from its natural course or location or controlling water in its natural course or location by means of a control structure, canal, flume, reservoir, bypass, pipeline, conduit, well, pump or other structure or device or by increasing the volume or timing of water flow above its natural (pre-diversion) levels.

Water treatment plant shall mean the facilities within the domestic water supply system that regulate the physical, chemical or bacteriological quality of the water.

DIVISION 6.2 PROCEDURE FOR DESIGNATION OF MATTERS OF STATE INTEREST

- 6.2.1 City Council to Make Designations
- 6.2.2 Public Hearing Required
- 6.2.3 Notice of Public Hearing; Publication
- 6.2.4 Matters to be Considered at Designation Hearing
- 6.2.5 Adoption of Designation and Regulations
- 6.2.6 Effect of Notice of Designation – Moratorium until Final Determination
- 6.2.7 Mapping Disputes

6.2.1 City Council to Make Designations

Designations and amendments of designations may be initiated in three ways:

- (A) The City Council may in its discretion designate and adopt regulations for the administration of any matter of state interest.
- (B) The Planning and Zoning Commission may on its own motion or upon City Council request, recommend the designation of matters of state interest to City Council. The City Council shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.
- (C) City staff may request that City Council designate an area or activity of state interest and adopt regulations for the administration of the matter designated. The City Council shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

6.2.2 Public Hearing Required

The City Council shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.

6.2.3 Notice of Public Hearing; Publication

- (A) The City shall prepare a notice of the designation hearing which shall include:
 - (1) The time and place of the hearing;
 - (2) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
 - (3) The telephone number and e-mail address where inquiries may be answered; and
 - (4) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.

(B) At least thirty (30) days, but no more than sixty (60) days before the public hearing, the City shall publish the notice in a newspaper of general circulation in the City and shall mail the notice to each of the following as deemed appropriate in the City's discretion:

(1) State and federal agencies; and

(2) Any local government jurisdiction that would be directly or indirectly affected by the designation.

6.2.4 Matters to be Considered at Designation Hearing

At the public hearing, the City Council shall receive into the public record:

(A) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including City staff;

(B) Any documents that may be offered; and

(C) The recommendation of the Planning and Zoning Commission.

6.2.5 Adoption of Designations and Regulations

(A) City Council shall consider the following when determining whether to designate an area or activity to be of state interest:

(1) All testimony, evidence and documents taken and admitted at the public hearing;

(2) The intensity of current and foreseeable development pressures in the City;

(3) The matters and considerations set forth in any applicable guidelines or model regulations issued by the Colorado Land Use Commission and other State agencies; and

(4) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

(B) Any City Council order designating an area or activity to be of state interest and the adoption of any regulations for the administration of an area or activity of state interest shall be by ordinance.

(C) In the event the City Council finally determines that any matter is a matter of state interest within the City, it shall be the City Council's duty to designate such matter and adopt regulations for the administration thereof.

(D) Each designation order adopted by the City Council shall:

(1) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated; and

- (2) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

6.2.6 Effect of Designation – Moratorium Until Final Determination

After a matter of state interest is designated, no person shall engage in development in such area and no such activity shall be conducted until the designation and regulations for such area or activity are finally determined as required by Section 24-65.1-404 (4), C.R.S.

6.2.7 Mapping Disputes

Where interpretation is needed as to the exact location of the boundary of any designated area and where there appears to be a conflict between a mapped boundary and actual field conditions, the City Council shall make the necessary boundary determination at a public hearing after providing notice pursuant to Section 6.2.3.

DIVISION 6.3 DESIGNATED ACTIVITIES OF STATE INTEREST

6.3.1 Designated Areas and Activities of State Interest

6.3.1 Designated Activities of State Interest

The City Council has designated the following matters of state interest for regulation:

(A) Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extension of Existing Domestic Water and Sewage Treatment Systems (Ordinance No. 122, 2021)

(B) Site Selection of Arterial Highways and Interchanges and Collector Highways (Ordinance No. 122, 2021)

DIVISION 6.4 EXEMPTIONS

6.4.1 Exemptions

6.4.1 Exemptions

These Regulations are not applicable to the following:

- (A) Any fully constructed and operating project or facility that was lawfully developed under prior law in effect before the effective date of these Regulations that would be subject to these Regulations if it were currently proposed, may continue to operate pursuant to Division 1.5, Nonconforming Uses and Structures, with the exception that enlargement or expansion of any such project or facility shall require a permit under these Regulations unless an exemption exists or a FONAI is issued. An enlargement or expansion requiring a permit shall not include the maintenance, repair or replacement of existing buildings or structures associated with an existing facility, including retrofitting or updating technology, provided any changes do not result in a material change as determined by the Director. Enlargements or expansions not requiring a permit may still be subject to Section 1.5.5 or an applicable Land Use Code development review process.
- (B) Any site specific development plan that would be subject to these Regulations but has received final City approval as of the effective date of these Regulations so long as the vested rights for such approved site specific development plan have not expired. This exemption does not apply to any subsequent modifications to the approved site specific development plan or expansion of the development site that was not included within the City approved application and for which a new or revised development application is required.
- (C) Any proposed development plan otherwise subject to these Regulations but such proposed development plan is (1) subject to review and approval as part of the review of a proposed residential, commercial, industrial or mixed-use project under a development review process other than Site Plan Advisory Review under the Land Use Code, including but not limited to a project development plan or basic development review, and (2) which proposed development plan is directly necessitated by a proposed residential, commercial, industrial or mixed-use development.
- (D) Any project previously approved by the Planning and Zoning Commission pursuant to the Site Plan Advisory Review (SPAR) process.
- (E) Any proposed development plan issued a FONAI pursuant to Section 6.6.5.

DIVISION 6.5 PERMIT AUTHORITY

6.5.1 Permit Authority Established

6.5.1 Permit Authority Established

- (A) The Fort Collins Permit Authority is hereby established consisting of the Fort Collins City Council, or with respect to matters delegated by these Regulations, the Director and the Planning and Zoning Commission.
- (B) The Director shall be the decision maker regarding issuing or not issuing a FONAI.
- (C) The Planning and Zoning Commission shall be the decision maker regarding appeals of Director decisions to issue or not issue a FONAI and regarding recommendations to City Council regarding permit applications.
- (D) The City Council shall be the decision maker for approving or not approving a Permit. The City Council shall also be the decision maker regarding appeals of Planning and Zoning Commission decisions regarding the appeal of Director decisions to issue or not issue a FONAI. Permit applications are reviewed by the City Council pursuant to the procedure set forth in these Regulations.

DIVISION 6.6 PERMIT APPLICATION PROCEDURES

- 6.6.1 Preliminary Design Review
- 6.6.2 Application Fee; Financial Security Waiver
- 6.6.3 Pre-Application Area or Activity Review
- 6.6.4 Neighborhood Meeting
- 6.6.5 Determination of Applicability of Regulations- FONAI
- 6.6.6 Application Submission Requirements
- 6.6.7 Determination of Completeness
- 6.6.8 Referral Agencies
- 6.6.9 Simultaneous Processing of Associated Development Applications
- 6.6.10 Combined Application for Multiple Activities or Development in More than One Area of State Interest.
- 6.6.11 Permit Decision Making Procedures
- 6.6.12 Conduct of Permit Hearings
- 6.6.13 Approval or Denial of Permit Application
- 6.6.14 Issuance of Permit, Conditions

6.6.1 Application Procedures

The application procedures for activities and areas of state interest are described in Land Use Code Division 2.20 and in these Regulations.

6.6.2 Application Fee; Financial Security Waiver

- (A) Each pre-application area or activity review application and development application for a permit submitted must be accompanied by the fees established pursuant to Section 2.2.3(D). The Director may determine at any time during the pre-application review and development application review process that it is necessary to retain a third-party consultant to assist in reviewing the application pursuant to Section 2.2.3(D). All costs incurred in the third-party consultant review shall be borne by the applicant in addition to the City's internal application review fees.
- (B) A referral agency may impose a reasonable fee for the review of a development application and the applicant shall pay such fee which shall detail the basis for the fee imposed. No hearings by the Permit Authority will be held if any such referral agency's fee has not been paid.

6.6.3 Pre-Application Area or Activity Review

- (A) The purpose of the pre-application area or activity review is to determine if a permit is required for the proposed development plan, application submittal requirements, procedural requirements, and relevant agencies to coordinate with as part of any permit

review process. Topics of discussion may include, as relevant to the specific application, but are not limited to:

- (1) Characteristics of the activity, including its location, proximity to natural and human-made features; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies.
- (2) The nature of the development proposed, including land use types and their densities; placement of proposed buildings, pipelines, structures, operations, and maintenance; the protection of natural habitats and features, historic and cultural resources, and City natural areas, parks, or other City property or assets; staging areas during construction; alternatives considered; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures; and types of water and wastewater treatment systems proposed.
- (3) Proposed mitigation of adverse impacts.
- (4) Siting and design alternatives and reasons why such alternatives are not feasible.
- (5) Community policy considerations, including the review process and likely conformity of the proposed development with the policies and requirements of these Regulations.
- (6) Applicable regulations, review procedures and submission requirements.
- (7) Other regulatory reviews or procedures to which the applicant is subject, the applicant's time frame for the proposed development plan, and other applicant concerns.

(B) To schedule the pre-application area or activity review, the applicant must first provide the Director with the following:

- (1) Names and addresses of all persons proposing the activity or development;
- (2) Name and qualifications of the person(s) responding on behalf of the applicant;
- (3) A written summary of the desired location of the proposed development plan including a vicinity map showing the location of three (3) siting and design alternatives, one of which is the preferred location, drafted at approximately thirty percent (30%) completeness. One (1) of the three (3) alternatives submitted shall avoid natural features and historic and cultural resources and avoid the need for mitigation to the maximum extent feasible;
- (4) A vicinity map of the preferred siting and proposed development plan projected at an easily readable scale showing the outline of the perimeter of the parcel proposed for the project site (for linear facilities, the proposed centerline and width of any corridor to be considered), property parcels, location of all residences and businesses, any abutting subdivision outlines and names, the boundaries of any adjacent municipality or growth management area, roads (clearly labeled) and natural features within a half

- (1/2) mile radius and identified historic and cultural resources within a two hundred (200) foot radius of the project site boundary; an Ecological Characterization Study as defined by Land Use Code Section 3.4.1 within a half (1/2) mile radius of the impact area; and a cultural and historic resource survey documentation and determinations of Fort Collins landmark eligibility for resources within two hundred (200) feet of the project site boundary for each of the three siting alternatives. All final determinations of eligibility for designation as a Fort Collins landmark shall be made in the reasonable discretion of City Historic Preservation staff after reviewing the cultural and historic resource survey and such determinations are not subject to appeal.
- (5) A written summary of the cumulative impacts on natural features within a half (1/2) mile radius and on historic and cultural features within 200 feet of the preferred location of the proposed development plan;
 - (6) Any required certificate of appropriateness pursuant to Chapter 14 of the Code of the City of Fort Collins allowing proposed alterations to any designated historic or cultural resource that may be affected by the proposed development plan.
 - (7) Any conceptual mitigation plans for the preferred location of the proposed development plan;
 - (8) The required application fee and applicant agreement to pay the costs of (1) the Director retaining third-party consultants necessary to assist the Director in making a FONAI determination pursuant to Section 6.6.5; (2) the Director retaining third-party consultants necessary to assist the Director with the completeness review of any submitted application pursuant to Section 6.6.7; and (3) the Director retaining third-party consultants necessary to assist City staff in reviewing a complete permit application or City Council in rendering a decision on a permit; and
 - (9) Any additional information requested by the Director as necessary to make a FONAI determination pursuant to Section 6.6.5.

6.6.4 Neighborhood meeting

- (A) Prior to a written FONAI determination being issued pursuant to Section 6.6.5, a neighborhood meeting is required pursuant to Land Use Code Section 2.2.2 following the pre-application area or activity review document submittal to the Director being deemed complete.
- (B) At the applicant's cost, notifications for the neighborhood meeting shall be mailed to the property owners and occupants within one thousand feet (1,000) in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

6.6.5 Determination of Applicability of Regulations - FONAI

The Director shall determine the applicability of these Regulations only after a neighborhood meeting and based upon the pre-application area or activity review meeting described in Section 6.6.3.

- (A) The Director shall make a finding related to whether the proposed development plan will result in adverse impacts. In order for the Director to determine that a proposed development plan will only result in negligible adverse impacts and to issue a FONAI, they must determine that the proposed project does not meet any of the below criteria (1) through (8). The decision by the Director of potential adverse impacts may or may not include consideration of proposed mitigation depending on factors that may include, but are not limited to, the scale, magnitude, and complexity of mitigation, and the sensitivity of the resource being mitigated. The FONAI shall be evaluated under the following criteria:
- (1) Is located wholly or partly on, under, over or within an existing or planned future City natural area or park, whether developed or undeveloped;
 - (2) Is located wholly or partly on, under, over or within a City-owned, non-right-of-way, property or current or anticipated City building site, whether developed or undeveloped;
 - (3) Is located within a buffer zone of an existing natural habitat or feature, as defined in Land Use Code Section 3.4.1;
 - (4) Is located within a buffer of a high priority habitat as identified by Colorado Parks and Wildlife;
 - (5) Has potential to adversely impact a natural feature as defined by the Land Use Code;
 - (6) Has the potential to adversely impact natural habitat corridors identified by the City's Natural Area Department;
 - (7) Has potential to adversely impact historic or cultural resources within a two hundred (200) foot outer boundary of the proposed development plan; or
 - (8) Has potential to adversely impact disproportionately impacted communities.
- (B) If the Director issues a FONAI, the applicant does not need to submit a permit application under these Regulations. However, issuance of a FONAI does not exempt the proposed development plan from all Land Use Code requirements, and an alternative review process may be required.
- (C) If the Director issues a FONAI and the applicant subsequently makes material changes to the development plan, the applicant is required to schedule another pre-application area or activity review pursuant to Section 6.6.3 to discuss the changes. Based on the new information and whether the revised development could result in adverse impacts, the Director may rescind the FONAI by issuing a written determination pursuant to below Subsection (F) and require a permit under these Regulations.

(D) Permit Not Required. If the Director has made a finding of negligible adverse impacts, or FONAI, a permit pursuant to these Regulations is not required. However, the proposed development plan may be subject to a different Land Use Code development review process.

(E) Permit Required. If the Director determines a FONAI is not appropriate, the proposed development plan requires a permit and is subject to these Regulations. The Director shall provide the applicant with written comments, to the extent such comments differ from comments provided for any conceptual review, regarding the proposal to inform and assist the applicant in preparing components of the permit application; including a submittal checklist pursuant to Section 6.6.6, and additional research questions to address common review standards pursuant to Section 6.7.1.

(F) Notice of Director's Determination.

(1) The Director's determination to either issue a FONAI and not require a permit or to not issue a FONAI and require a permit shall be in writing and describe in detail the reasons for the determination. The Director shall make this determination within twenty-eight (28) days after the neighborhood meeting pursuant to Section 6.6.4 or the date of receipt of any requested additional information or third-party consultation.

(2) If a permit is required, the Director shall provide additional information needed to deem a permit application complete; including additional scope of analysis needed to review.

(3) The Director shall provide the written determination to the applicant by email if an email address has been provided and promptly mail a copy of the written determination, at the applicant's cost, to the applicant and to property owners within one-thousand (1000) feet in all directions of the location of the proposed development plan as determined by the Director in their reasonable discretion and shall also be posted on the City's website at www.fcgov.com.

(G) Appeal of the Director's Determination. The Director's determination whether to issue or not issue a FONAI is subject to appeal to the Planning and Zoning Commission pursuant to Land Use Code Section 2.2.12(D). The Planning and Zoning Commission decision on the appeal is further subject to appeal to City Council pursuant to the Code of the City of Fort Collins Ch. 2, Art. 2, Div. 3. After the filing of a timely notice of appeal pursuant to Section 2.2.12(D), the Director shall not accept any application that may be affected by an appeal decision and, if an application has been accepted, shall cease processing such application until the appeal has been decided, which in the case of an appeal to Council shall be the date of adoption of the appeal resolution. The filing of a timely notice of appeal shall reset any time period set forth in 6.6.7 and 6.6.11 and such time period shall begin from the date the appeal is decided as previously described.

6.6.6 Application Submission Requirements

In addition to specific submission requirements for the activities addressed in Divisions 6.8 and 6.9, all applications for a permit under these Regulations shall be accompanied by the following materials:

- (A) Completed application form and submittal checklist in the format established by the Director.
- (B) Any plan, study, survey or other information, in addition to the information required by this Section, at the applicant's expense, as in the Director's judgment is necessary to enable the Permit Authority to make a determination on the application. Such additional information may include applicant's written responses to comments by a referral agency.

Additional materials may be required by the Director for a particular type of proposed development plan. To the extent an applicant has prepared or submitted materials for a federal, state, county, or city permit which are substantially the same as required herein, a copy of those materials may be submitted to satisfy the corresponding requirement below.

6.6.7 Determination of Completeness

- (A) No permit application may be processed, nor shall a permit be deemed received pursuant to Section 24-65.1-501(2)(a), C.R.S., until the Director has determined it to be complete. Following the pre-application areas and activities review meeting and neighborhood meeting, the applicant may submit a permit application only after at least fourteen (14) days have passed since the FONAI determination. Upon submittal of the application, the Director shall determine whether the application is complete or whether additional information is required, and if so, shall inform the applicant and pause the completeness review until information is received. Any request for waiver of a submission requirement shall be processed prior to the Director making a determination that an application is complete. The Director may retain at the applicant's cost third-party consultants necessary to assist the Director with the completeness review. If the Director retains a third-party consultant for permit review, the scope of work will be available for review by the applicant.
- (B) No determination of completeness may exceed sixty (60) days unless one or more of the following occurs:
 - (1) The Director determines in writing that more than sixty (60) days is necessary to determine completeness in consideration of the size and complexity of the proposed development plan or available City resources. In such case, the Director shall determine how many additional days are needed, which shall not exceed sixty (60) additional days; or
 - (2) The Director and the applicant agree in writing to exceed sixty (60) days.
- (C) When the Director has determined that a submitted application is complete, or the time limit for making the completeness determination has elapsed even though the application

may not be complete, the Director shall inform the applicant in writing of the date of its receipt. Only upon the Director's determination that an application is complete, or the time limit for making the completeness determination has elapsed even though the application may not be complete, may the City's formal review process commence pursuant to these Regulations.

6.6.8 Referral Agencies

All permit applications under these Regulations shall be referred to internal and external review agencies or City departments as determined by the Director, including for pre-application submittals, completeness reviews and final application submittals. Copies of any such referral agency comments received shall be forwarded to the applicant for its response at the time that comments are provided from City review staff.

6.6.9 Simultaneous Processing of Associated Development Applications

If a development plan subject to these Regulations contains project components not subject to these Regulations but subject to other requirements in the Land Use Code that result in an additional and separate development application, then both development applications can be processed simultaneously.

6.6.10 Combined Application for Multiple Activities or Development in More than One Area of State Interest

When approval is sought to conduct more than one activity of state interest, engage in development in more than one activity or area of state interest, or a combination of activities and areas, a combined application may be completed for all such activities or developments in areas of state interest and may be reviewed simultaneously and, if appropriate in the discretion of City Council, a single determination made to grant or deny permit approval. The City reserves the right to charge an application fee pursuant to Section 6.6.2 of these Regulations for each activity or area that is the subject of a combined application.

6.6.11 Permit Decision Making Procedures

When an application has been determined complete by the Director pursuant to Section 6.6.7 of these Regulations, or the time limit for making the completeness determination has elapsed even though the application may not be complete, then, and only then, shall the permit review process commence. At that time, the following schedule shall apply:

- (A) No later than thirty (30) days after the receipt of a completed application, the Director will schedule a hearing before City Council. The thirty (30) day period to schedule the hearing may be extended if the applicant agrees to an extension in writing. Prior to such hearing, the Planning and Zoning Commission shall forward a recommendation to City Council to approve, approve with conditions, or deny the permit application.
- (B) The Director may retain third-party consultants at the applicant's expense necessary to assist City staff in reviewing a complete permit application or assist City Council in rendering a decision on a permit.

(C) Upon setting a permit hearing date, the Director shall publish notice once in a newspaper of general circulation in the City of Fort Collins containing:

(1) The date, time, and place of the permit hearing not less than thirty (30) nor more than sixty (60) days before the date set for the hearing. The thirty (30) and sixty (60) day periods may be extended if the applicant agrees to an extension in writing.

(2) The date, time, and place of the Planning and Zoning Commission hearing where a recommendation will be made at least seven (7) days prior to the hearing.

(D) At least fourteen (14) days prior to the City Council permit hearing, the Director shall mail notice of the date, time, and place of the hearing to the applicant and to property owners pursuant to Section 2.2.6. Notice of the Planning and Zoning Commission hearing where a recommendation will be made shall also be mailed at least fourteen (14) days prior to such hearing pursuant to Section 2.2.6 and may be combined with the mailed notice for the City Council hearing.

6.6.12 Conduct of Permit Hearing.

(A) Planning and Zoning Commission hearings where a recommendation is made shall follow the requirements and procedures of Section 2.2.7.

(B) City Council shall adopt into its rules of procedure a procedure for conducting permit hearings. Upon the closing of the portion of a permit hearing to receiving comments and evidence from the public, agencies, and the applicant, no further comments or evidence will be received from the public, agencies or applicant, including at any general public comment period for a City Council meeting or public comment associated with a specific agenda item such as a designation associated with a permit application, unless specifically authorized by City Council by reopening the public hearing.

6.6.13 Approval or Denial of Permit Application

(A) The burden of proof shall be upon the applicant to show compliance with all applicable standards of the Regulations. 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.

(B) A permit application to conduct a designated activity of state interest or develop in a designated area of state interest may not be approved unless the applicant satisfactorily demonstrates that the development plan, in consideration of all proposed mitigation measures and any conditions, complies with all applicable standards. 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.

(C) If City Council finds that there is insufficient information concerning any of the applicable standards to determine that such standards have been met, City Council may deny the

permit, may approve with conditions pursuant to Section 6.6.14 which if fulfilled would bring the development plan into compliance with all applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.

(D) City Council shall approve a permit application only if the proposed development plan satisfies all applicable standards of these Regulations in consideration of proposed mitigation measures and any conditions necessary to attain compliance with any standards. City Council may also impose additional conditions pursuant to Section 6.6.14 on any permit.

(E) City Council may close the public hearing and make a decision, or it may continue the matter for a decision only. However, City Council shall make a decision by majority vote within ninety (90) days after the closing of the public hearing, or the permit shall be deemed approved. To the extent the public hearing is reopened and closed, the closing date of the public hearing shall be measured from the most recent closing date.

(F) City Council shall adopt by resolution findings of fact in support of its decision and, if approved, the written permit shall be attached to such resolution. To the extent a permit is deemed approved because City Council has not made a decision, adoption of such a resolution is not required.

6.6.14 Issuance of Permit; Conditions

(A) City Council may attach conditions to the permit pursuant to Section 2.2.9 and additional conditions to ensure that the purpose, requirements, and standards of these Regulations are continuously met throughout the development, execution, operational life, and any decommissioning period. A development agreement between the City and the permittee may be required as a condition of approval.

(B) Issuance of a permit signifies only that a development plan has satisfied, or conditionally satisfied, the applicable Regulations, and prior to commencing any development, conditions of the permit, additional Land Use Code, Code of the City of Fort Collins, other City requirements, or other state or federal requirements, may need to be met.

(C) Subject to (D) below and Section 6.11.1, the permit may be issued for an indefinite term or for a specified period of time with such period depending upon the size and complexity of the development plan.

(D) If the permittee fails to take substantial steps to initiate the permitted development plan within twelve (12) months from the date of the approval of the permit or such other time period specified in the permit, or if such steps have been taken but the applicant has failed to complete the development with reasonable diligence, then the permit may be revoked or suspended in accordance with Section 6.11.1. This time may be extended by the Director for only one (1) additional year upon a showing of substantial progress.

DIVISION 6.7 COMMON REVIEW STANDARDS

6.7.1 Review Standards for All Applications

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. 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. The common review standards are as follows:

- (A) The applicant has obtained or will obtain all property rights, permits and approvals necessary for the proposal, including surface, mineral and water rights.
- (B) The health, welfare and safety of the community members of the City will be protected and served.
- (C) The proposed activity is in conformance with the Fort Collins Comprehensive Plan and other duly adopted plans of the City, or other applicable regional, state or federal land development or water quality plan.
- (D) The development plan is not subject to risk from natural or human caused environmental hazards. The determination of risk from natural hazards to the development plan may include but is not limited to the following considerations:
 - (1) Unstable slopes including landslides and rock slides.
 - (2) Expansive or evaporative soils and risk of subsidence.
 - (3) Wildfire hazard areas.
 - (4) Floodplains.
- (E) The development plan will not an adverse impact on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:

(1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other local government facilities and services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity.

(2) Need for temporary roads or other infrastructure to serve the development plan for construction and maintenance.

(F) The development plan will not have an adverse impact on the quality or quantity of recreational opportunities and experience. The determination of impacts of the development plan on recreational opportunities and experience may include but is not limited to the following considerations:

(1) Changes to existing and projected visitor days.

(2) Changes in quality and quantity of fisheries.

(3) Changes in instream flows or reservoir levels.

(4) Changes in access to recreational resources.

(5) Changes to quality and quantity of hiking, biking, multi-use or horseback riding trails.

(6) Changes to regional open space.

(7) Changes to existing conservation easements.

(8) Changes to City parks, playgrounds, community gardens, recreation fields or courts, picnic areas, and other City park amenities.

(G) The development plan when completed will not have an adverse impact on existing visual quality. The determination of visual impacts of the development plan may include but is not limited to the following considerations:

(1) Visual changes to ground cover and vegetation, streams, or other natural features.

(2) Interference with viewsheds and scenic vistas.

(3) Changes in landscape character of unique land formations.

(4) Compatibility of structure size and color with scenic vistas and viewsheds.

(5) Changes to the visual character of regional open space.

(6) Changes to the visual character of existing conservation easements.

(7) Changes to the visual character of City parks, trails, natural areas, or recreation facilities.

(8) Changes to the visual character of historic and cultural resources.

(H) The development plan will not have an adverse impact on air quality. The determination of effects of the development plan on air quality may include but is not limited to the following considerations:

(1) Changes in visibility and microclimates.

(2) Applicable air quality standards.

(3) Increased emissions of greenhouse gases.

(4) Emissions of air toxics.

(I) The development plan will not have an adverse impact on surface water quality. The determination of impacts of the development plan on surface water quality may include but is not limited to the following considerations:

(1) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;

(2) Applicable narrative and numeric water quality standards.

(3) Changes in point and nonpoint source pollution loads.

(4) Increase in erosion.

(5) Changes in sediment loading to waterbodies.

(6) Changes in stream channel or shoreline stability.

(7) Changes in stormwater runoff flows.

(8) Changes in trophic status or in eutrophication rates in lakes and reservoirs.

(9) Changes in the capacity or functioning of streams, lakes or reservoirs.

(10) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.

(11) Changes to stream sedimentation, geomorphology, and channel stability.

(12) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.

(J) The development plan will not have an adverse impact on groundwater quality. The determination of impacts of the development plan on groundwater quality may include but is not limited to the following considerations:

(1) Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.

(2) Changes in capacity and function of wells within the impact area.

(3) Changes in quality of well water within the impacted area.

(K) The development plan will not have an adverse impact on wetlands and riparian areas (including riparian forests) of any size regardless of jurisdictional status. In determining impacts to wetlands and riparian areas, the following considerations shall include but not be limited to:

(1) Changes in the structure and function of wetlands.

(2) Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.

(3) Changes to aerial extent of wetlands.

(4) Changes in species' characteristics and diversity.

(5) Transition from wetland to upland species.

(6) Changes in function and aerial extent of floodplains.

(L) The development plan shall not have an adverse impact on the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:

(1) Changes that result in loss of oxygen for aquatic life.

(2) Changes in flushing flows.

(3) Changes in species composition or density.

(4) Changes in number of threatened or endangered species.

(5) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.

(6) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.

(M) The development plan shall not have an adverse impact on the quality of terrestrial and aquatic plant life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:

- (1) Changes to high priority habitat identified by the Colorado Parks and Wildlife and the Fort Collins Natural Areas Department.
 - (2) Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
 - (3) Changes in advancement or succession of desirable and less desirable species, including noxious weeds.
 - (4) Changes in threatened or endangered species.
- (N) The development plan will not have an adverse impact on natural habitats and features as defined in Land Use Code Section 3.4.1.
- (O) The development plan will not have an adverse impact on historic or cultural resources as defined in Section 6.1.9 of these Regulations.
- (P) The development plan will not have an adverse impact on significant trees as defined in Land Use Code Section 3.2.1.
- (Q) The development plan will not have an adverse impact on soils and geologic conditions. The determination of impacts of the development plan on soils and geologic conditions may include but is not limited to the following considerations:
- (1) Loss of topsoil due to wind or water forces.
 - (2) Changes in soil erodibility.
 - (3) Physical or chemical soil deterioration.
 - (4) Compacting, sealing and crusting.
- (R) The development plan will not cause a nuisance. The determination of nuisance impacts of the development plan may include but is not limited to the following considerations: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.
- (S) The development plan will not result in risk of releases of, or exposures to, hazardous materials or regulated substances. The determination of the risk of release of, or increased exposures to, hazardous materials or regulated substances caused by the development plan may include but is not limited to the following considerations:
- (1) Plans for compliance with federal and state handling, storage, disposal, and transportation requirements.
 - (2) Use of waste minimization techniques.
 - (3) Adequacy of spill and leak prevention and response plans.

(T) The development plan will not have disproportionately greater adverse impact on disproportionately impacted communities within the City considering, for example, the distribution of impacts to the following:

(1) Air quality.

(2) Water quality.

(3) Soil contamination.

(4) Waste management.

(5) Hazardous materials.

(6) Access to parks, natural areas, trail, community services, cultural activities, and historic and cultural resources, and other recreational or natural amenities.

(7) Nuisances.

(U) The development plan shall include mitigation plans that avoid or minimize adverse impacts by limiting the degree or magnitude of the action. Mitigation plans shall include detailed information on how the proposed project will avoid or minimize adverse impacts identified and related to all applicable common and specific review standards, including but not limited to the following:

(1) Detailed information on how the proposed project will avoid or minimize adverse impacts on natural features must include an adaptive management plan and established performance criteria based on a local reference site and analogous habitat type. Plans submitted must address success criteria regarding quantity, quality, diversity and structure of vegetative cover or habitat value; and

(2) Detailed information on how the proposed project will avoid or minimize adverse impacts on historic and cultural features during the full span of ground disturbance and construction activities, to include an archeological monitoring plan that anticipates the possibility of new discoveries related to that activity; and plan(s) of protection that detail mitigation strategies for any identified historic and cultural resources.

DIVISION 6.8 Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extensions of Such Systems

- 6.8.1 Applicability
- 6.8.2 Purpose and Intent
- 6.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

6.8.1 Applicability

These Regulations shall apply to the site selection and construction of all major new domestic water and sewage treatment systems, and major extensions of such systems within the municipal boundaries of the City.

6.8.2 Purpose and Intent

The specific purpose and intent of this Division are:

- (A) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are conducted in such a manner as to avoid or fully mitigate impacts associated with such development;
- (B) To ensure that site selection and construction of major new domestic water and sewage treatment systems and major extensions of such systems are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities within the City;
- (D) To ensure that the off-site adverse impacts of new domestic water and sewage treatment systems are avoided or fully mitigated; and
- (E) To ensure that the surface and groundwater resources of the City are protected from any adverse impact of the development of major water and sewage treatment systems and major extensions of such systems.

6.8.3 Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions

A permit application for the site selection and construction of a major new domestic water or sewage treatment system or major extension of such system shall be approved with or without conditions only if the development plan complies with the review standards in Section 6.7.1 and the below standards, to the extent applicable or relevant. 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. The specific review standards are:

- (A) New domestic water and sewage treatment systems shall only be constructed in areas which will result in the proper use of existing treatment plants and the orderly development of domestic water and sewage treatment systems within the City; and
- (B) Area and community development and population trends must demonstrate clearly a need for such development.

DIVISION 6.9 Site Selection of Arterial Highways and Interchanges and Collector Highways

- 6.9.1 Applicability
- 6.9.2 Purpose and Intent
- 6.9.3 Specific Review Standards for Arterial Highway, Interchange or Collector Highway Projects

6.9.1 Applicability

This Division shall apply to the site selection of all arterial highways and interchanges and collector highways within the municipal boundaries of the City.

6.9.2 Purpose and Intent

The specific purpose and intent of this Division are:

- (A) To ensure that community traffic needs are met;
- (B) To provide for the continuation of desirable community traffic circulation patterns by all modes;
- (C) To discourage expansion of demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by the City;
- (D) To prevent direct conflicts with local, regional and state master plans;
- (E) To ensure that highway and interchange development is compatible with surrounding land uses;
- (F) To encourage the coordination of highway planning with community and development plans;
- (G) To discourage traffic hazards and congestion;
- (H) To minimize sources of traffic noise, air and water pollution; and
- (I) To protect scenic, natural, historical and cultural resources from destruction.

6.9.3 Specific Review Standards for Arterial Highway, Interchange or Collector Highway Projects

A permit for the site selection of an arterial highway, interchange or collector highway shall be approved with or without conditions only if the proposed development plan complies with the review standards in Section 6.7.1 and the below standards, to the extent applicable or relevant. 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. The specific review standards are:

- (A) The proposed arterial highway, interchange or collector highway will be located so that natural habitats and features, historic and cultural resources, City natural areas and parks and other local government facilities and resources are protected to the maximum extent feasible;
- (B) The proposed arterial highway or interchange or collector highway will be located only in a corridor for which a clear and reasonable local and regional need has been demonstrated;
- (C) The location and access limitations for the arterial highway, interchange or collector highway will not isolate community neighborhoods from and, where practicable, will enhance access from community neighborhoods to public facilities including schools, hospitals, mass transit, pedestrian walkways and bikeways, recreational facilities and areas, community centers, government and social services provider offices and facilities, natural areas, and open spaces;
- (D) The construction of the arterial highway and interchange or collector highway shall be phased to minimize interference with traffic movement;
- (E) The location and access limitations for the arterial highway, interchange or collector highway will not restrict access to other roadways, mass transit facilities, pedestrian walkways and bikeways, local commercial services, residential developments, business and employment centers, and public facilities including schools, hospitals, recreational facilities and areas, natural areas, and open spaces;
- (F) Alternative modes of transportation will be incorporated into the proposal to the extent feasible;
- (G) If park-and-ride facilities are utilized, they shall be located in areas approved by the City;
- (H) The location of the proposed new or expanded arterial highway, interchange or collector highway will not impede the delivery of essential community services and goods;
- (I) Desirable local and regional community land use patterns will not be disrupted by the location of the proposed new or expanded arterial highway, interchange or collector highway;
- (J) The location and access limitations for the arterial highway, interchange or collector highway will not create safety hazards to motorists, pedestrians or bicyclists by causing or contributing to overuse, improper use or congestion, or cause unnecessary diversion of

regional traffic onto other City roadways or inappropriate or inadequate connections to pedestrian and bicycle routes;

- (K) The proposed location of the new or expanded arterial highway, interchange or collector highway will be located so as to complement the efficient extension of planned public services, utilities and development in general, both regionally and within the City;
- (L) The proposed location of the new or expanded arterial highway, interchange or collector highway will adhere to the plan, process, procedure and requirements of the State and the Federal Highway Administration, and such construction, expansion or modification will be included in local and regional transportation plans;
- (M) The proposed location of the new or expanded arterial highway, interchange or collector highway will not result in the destruction, impairment or significant alteration of sensitive, key commercial, tourist or visitor areas or districts within the City;
- (N) The proposed location of the new or expanded arterial highway, interchange or collector highway will not contribute to a negative economic impact to residential, commercial, tourist or visitor areas or districts within the City;
- (O) To the extent tolling is proposed, the use or level of tolling is appropriate in light of existing toll levels, if any, and any prior or projected public infrastructure investment;
- (P) The proposed highways can be integrated into the regional transportation network;
- (Q) The new or expanded arterial highway, or interchange or collector highway will not have an adverse impact on prime or unique farmland as defined by the U.S. Department of Agriculture, Natural Resources Conservation Service;
- (R) The proposed location and design of the arterial highway, interchange or collector highway does not cause lighting impacts from headlights or streetlights to nearby residential neighborhoods or other developments or night sky objectives and plans;
- (S) Noise levels caused by the new or expanded arterial highway, interchange or collector highway will follow federal noise regulations;
- (T) Vertical structures will match the character of the City through materials and design; and
- (U) The local air quality impacts of the new or expanded arterial highway, interchange or collector highway shall support attainment of federal and state ambient air quality standards and shall not increase risks to human health and the environment posed by air pollutants.

DIVISION 6.10 Financial Security

6.10.1 Financial Security

6.10.1 Financial Security

- (A) Before any development occurs pursuant to an approved permit issued pursuant to these Regulations, the applicant shall provide the City with a guarantee of financial security deemed adequate by the Director to accomplish the purposes of this Section, in a form approved by the City Attorney and payable to the City of Fort Collins.
- (B) The purpose of the financial guarantee is to ensure that the permittee shall faithfully perform all requirements of the permit and the Director shall determine the amount of the financial guarantee in consideration of the following standards, to the extent applicable or relevant to the approved development plan:
- (1) The estimated cost of returning the site of the permitted development plan to its original condition or to a condition acceptable in accordance with standards adopted by the City for the matter of state interest for which the permit is being granted;
 - (2) The estimated cost of implementing and successfully maintaining any revegetation required by the permit.
 - (3) The estimated cost of completing the permitted development plan; and
 - (4) The estimated cost of complying with any permit conditions, including mitigation, monitoring, reporting, and City inspections to ensure compliance with the terms of the permit.
- (C) Estimated cost shall be based on the applicant's submitted cost estimate. The Director shall consider the duration of the development plan and compute a reasonable projection of increases due to inflation over the entire life of the development plan. The Director may require, as a condition of the permit, that the financial security shall be adjusted upon receipt of bids.
- (D) The financial guarantee may be released in whole or in part with the approval of the Director only when:
- (1) The permit has been surrendered to the Director before commencement of any physical activity on the site of the approved development plan;
 - (2) The approved development plan has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Director in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit is being granted;
 - (3) The approved development plan has been satisfactorily completed; or

- (4) Applicable guaranteed conditions have been satisfied.
- (E) Any security may be cancelled by a surety only upon receipt of the Director's written consent which may be granted only when such cancellation will not detract from the purposes of the security.
- (F) If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any State authority, then the permittee, within sixty (60) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the permittee to make substitution of surety within the time allowed, the Director shall suspend the permit until proper substitution has been made.
- (G) No security is acceptable if signed by or drawn on an institution for or in which the permittee is an owner, shareholder, or investor other than simply an account holder.
- (H) The Director may determine at any time that a financial guarantee should be forfeited because of any violation of the permit. The Director shall provide written notice of such determination to the surety and the permittee of their right to written demand of the Director within thirty (30) days of receiving written notice from the Director.
- (1) If no demand is made within said period, then the Director shall order in writing that the financial guarantee be forfeited and provide a copy of such order to the surety and permittee.
- (2) If a timely demand is received, the Director shall make good faith efforts to meet with the permittee and surety within thirty (30) days after the receipt of such demand. At the meeting the permittee and surety may present any information with respect to the alleged violation for the Director's consideration. At the conclusion of any meeting, the Director shall either withdraw the notice of violation or order in writing that the financial guarantee should be forfeited and provide a copy of such order to the surety and permittee.
- (I) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the City Attorney shall take such steps as deemed proper to recover such costs, including imposing and foreclosing a City lien on real property and/or certifying the same to the County Treasurer for collection in the same manner as real property taxes, pursuant to Sections 31-20-105 and 106, C.R.S.
- (J) The financial security under this Section may be waived, in the Director's sole discretion, if a proposed development plan is solely financed by state agencies, a political subdivision of the state, or a special or enterprise fund that has established to the Director's satisfaction the availability of funds required to complete the proposed development plan.

DIVISION 6.11 SUSPENSION OR REVOCATION OF PERMITS

6.11.1 Suspension or Revocation of Permits

6.11.1 Suspension or Revocation of Permits

- (A) If the Director has reason to believe that the permittee has violated any provision of the permit or the terms of any regulation for administration of the permit, and such violation poses a danger to public health, safety, welfare, the environment or wildlife resources, the Director has the authority to order the immediate suspension of all operations associated with implementing the approved development plan and suspension of the permit until the danger has been eliminated. At such time as the Director has determined the danger is eliminated and any violations of the permit or the terms of any regulation for administration of the permit, the Director shall withdraw the suspension. Should the danger be eliminated but violations of the permit still exist, the Director shall suspend the permit for up to an additional one-hundred and eighty (180) days pursuant to (B)(3) below.
- (B) If the Director has reason to believe that the permittee has violated any provision of any permit or the terms of any regulation for administration of the permit, and such violation does not pose a danger to public health, safety, welfare, the environment or wildlife resources, the Director may temporarily suspend the permit for an initial period of up to thirty (30) days or until the violation is corrected, whichever occurs first.
- (1) Before imposing such temporary suspension, the Director shall provide written notice to the permittee of the specific violation and shall allow the permittee a period of at least fifteen (15) days to correct the violation from the date notice was provided.
- (2) If the permit holder does not agree that there is a violation, the permittee shall, within fifteen (15) days of the date notice was provided, submit a written response to the Director detailing why the temporary suspension should not occur. Upon receiving such response, the Director shall within ten (10) days issue a written response either withdrawing the notice of violation or imposing the temporary permit suspension. The Director's decision is not subject to appeal.
- (3) Should a violation remain uncorrected after the initial period of temporary suspension has elapsed, the Director shall extend in writing the period of temporary suspension for up to an additional one-hundred and eighty (180) days or until the violation is corrected, whichever occurs first. Notice of such extension shall be provided to the permittee and the extended suspension may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending such appeal hearing, the permit suspension shall remain in effect.
- (C) Subsequent to any extended temporary suspension imposed under (B)(3) above, the Director may permanently revoke the permit upon a written determination that the violation for which the temporary suspension was premised remains uncorrected. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter

2, Article VI, of the Code of the City of Fort Collins, however, pending the decision of such appeal, the revocation shall remain in effect.

(D) The Director may permanently revoke a permit upon a written determination that the permittee has failed to take substantial steps to initiate the permitted development or activity within twelve (12) months from the date of the issuance of the permit or within the timeframe of any extensions granted, or, if such steps have been taken, the permittee has failed to complete or pursue completion of the development or activity with reasonable diligence. The determination shall be provided to the permittee and such revocation may be appealed pursuant to Chapter 2, Article VI, of the Code of the City of Fort Collins, however, pending such appeal hearing, the revocation shall remain in effect. The permanent revocation of a permit does not bar the future submittal of a new permit application for the same, or substantially the same, proposed development plan.

DIVISION 6.12 PERMIT REVIEW, RENEWAL, AMENDMENT, TRANSFER

6.12.1	Annual Review; Progress Reports
6.12.2	Permit Renewal
6.12.3	Permit Amendment
6.12.4	Minor Revision Not Constituting a Material Change
6.12.5	Transfer of Permits
6.12.6	Inspection

6.12.1 Annual Review; Progress Reports

- (A) Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report detailing any and all activities conducted by the permittee pursuant to the permit including, but not limited to, a satisfactory showing that the permit has complied with all conditions of the permit and applicable regulations for administration of the permit.
- (B) Director shall review the report within thirty (30) days from the date of submittal thereof. If the Director determines, based upon its review, that the permittee was likely to have violated the provisions of the permit or applicable regulations, or both, the Director shall make a good faith effort to meet with the permittee to discuss the matter. If the Director determines after any meeting that the permittee has violated the provisions of the permit or applicable regulations, or both, the Director may suspend and/or revoke the permit in accordance with Section 6.11.1.
- (C) Upon fulfillment of all permit conditions, this annual review requirement may be waived by the Director.
- (D) At any time, the Director may require the permittee to submit an interim progress report.

6.12.2 Permit Renewal

Permits issued under these Regulations may be renewed following the same procedure for approval of new permits except the renewal process shall not include the Director's FONAI review pursuant to Section 6.6.5.

6.12.3 Permit Amendment

The Director shall require a permit amendment for any material change, as determined by the Director, in the construction, use, or operation of an approved development plan from the terms and conditions of an approved permit. The amendment shall be processed in accordance with and subject to the same procedures and requirements set forth herein for a permit except that the Director's FONAI review pursuant to Section 6.6.5 shall not occur.

6.12.4 Minor Revision Not Constituting a Material Change

The permittee may apply to the Director for minor revisions to an issued permit to correct errors or make other changes to conform the permit to actual conditions to the extent such minor revision is not a material change to the permit as determined by the Director. The Director is granted discretion to approve such minor revisions or to determine that a permit amendment is required

pursuant to Section 6.12.3. In reviewing a requested minor revision or revisions, the Director shall consider the request in the context of previously approved minor revisions to determine whether in the aggregate, the requested minor revision or revisions constitute a material change.

6.12.5 Transfer of Permits

A permit may be transferred only upon the Director's written consent. The Director must ensure in approving any transfer that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the permit and these regulations; that such requirements, terms, and conditions remain sufficient to protect the health, welfare, and safety of the public; and that an adequate guarantee of financial security can be made.

6.12.6 Inspection

The Director in their sole discretion is empowered to cause the inspection of any development, operation, or decommissioning activities related to a permit, including on or off-site mitigation activities, to ensure compliance with such permit and applicable laws and regulations. The permittee shall provide reasonable access to property for which the permittee has the authority to do so and shall make good faith efforts to coordinate access for other property. To the extent such inspection is ongoing or otherwise subject to advance planning, the Director shall consult with the permittee to coordinate inspection to minimize potential disruptions. The Director may retain a third-party consultant to conduct such inspections, including a consultant with specialized knowledge or training, and the cost of all such inspections shall be the responsibility of the permittee. The inspections provided for under this Section are in addition to Section 2.14.3.

DIVISION 6.13 ENFORCEMENT

6.13.1 Enforcement

Any person engaging in development in a designated area of a state interest or conducting a designated activity of state interest who does not first obtain a permit pursuant to these Regulations, who does not comply with permit requirements, or who acts outside the authority of the permit, is in violation of this Land Use Code and the City may take enforcement action pursuant to Division 2.14 and may additionally take any other action available under these Regulations and civil or criminal law, including seeking injunctive relief, or revoking or suspending any permit issued pursuant to these Regulations or any permit issued pursuant to the Land Use Code or the Code of the City of Fort Collins. These Regulations are not intended to create third party rights of enforcement.

Introduced, considered favorably on first reading and ordered published this 2nd day of May, 2023, and to be presented for final passage on the 16th day of May, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 16th day of May, 2023.

Mayor

ATTEST:

City Clerk