

## AGENDA ITEM SUMMARY

City Council



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### STAFF

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### SUBJECT

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

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### EXECUTIVE SUMMARY

The purpose of this ordinance is to amend the Fort Collins Land Use Code to include 1041 regulations. 1041 powers give local governments the ability to regulate particular development projects occurring within their jurisdiction, even when the project has broader impacts. The 1041 regulations would allow for reviewing and permitting of two designated areas and activities of statewide interest - (1) major domestic water, sewage treatment and (2) highway projects. Staff has included five decision points for Council's consideration based on feedback from stakeholder meetings since Council's previous consideration of 1041 regulations on February 7, 2023.

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### STAFF RECOMMENDATION

Planning staff recommends adoption of the Ordinance with the following amendments on first reading:

- Update the definition of designated activities to exclude public right-away and remove pipe-size diameter and add easement-size.
- Update the term Finding of Negligible Adverse Impact (FONAI) to a Finding of No Significant Impact (FONSI).

If Council directs staff to act on Decision Points 2 through 5, additional time is needed to prepare amendments to the Ordinance to be presented at the time of second reading.

## BACKGROUND / DISCUSSION

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The term “1041” refers to the number of the bill, House Bill 74-1041, that created the 1041 powers in 1974, and the statutes regarding 1041 powers are also referred to as the Areas and Activities of State Interest Act (“AASIA”). The statute authorizes local governments to regulate specified activities and areas, and the proposed regulations address three types of activities listed in the statute. In October 2021, Council adopted Ordinance No. 122, 2021, to designate the following activities as being subject to the City’s authority granted under the AASIA: 1) Domestic water and wastewater treatment facilities; and 2) Highways and Interchanges. In Ordinance No. 122, 2021, Council also imposed a moratorium on conducting such activities, with certain exceptions, until Land Use Code regulations to administer the designated activities were adopted or until December 31, 2022. The moratorium was extended in December 2022 until March 31, 2023, by Ordinance No. 139, 2022.

As directed by Council through a Resolution adopted May 2021, staff has sought input from engaged community partners; including utility providers and environmental advocacy groups on 1041 regulations for major domestic water, sewage treatment and highway projects as set forth in the AASIA. Generally, these types of projects are reviewed through the Site Plan Advisory Review (SPAR), and by adopting the 1041 powers, the City will leverage a regulatory framework to review projects as opposed to the SPAR advisory process, which is non-binding. Following Council feedback, regulatory goals have included defining a process that is (1) contextually appropriate to Fort Collins, (2) addresses deficiencies within the SPAR process, (3) provides predictability for developers and decision makers, (4) establishes a meaningful public process, and (5) incentivize project siting and design that avoid impacts to critical natural habitat, cultural resources, and disproportionately impacted communities.

**1041 regulations align with City Plan environmental health policies and principles** - by directing development away from natural features to the maximum extent feasible. Protecting and enhancing the environment is a core value in Fort Collins, and the community’s leadership on environmental stewardship and conservation reinforces that core value. Since 1997, the Fort Collins Land Use Code Section 3.4.1 has included development standards directed at protecting and enhancing natural habitat features through buffering, naturalistic design, and mitigation performance criteria. These same guiding principles are incorporated within the proposed 1041 regulations for activities of statewide interest.

### **What problem does 1041 regulations solve?**

The Site Plan Advisory Review (SPAR) 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. Projects subject to SPAR are reviewed by staff through an advisory process and the level of details provided through the SPAR process are limited in scope. Additionally, because the SPAR process is advisory and non-binding there may be projects that were not initiated by public entities through the SPAR development review process. The 1041 permitting process would give local control of these types of projects, allow greater transparency through enhanced public engagement opportunities, and through the permitting authority, impose higher standards and improved environmental protections across the City.

### **City Council Decision Points**

As directed by the Council at their February 7, 2023 meeting, staff continued discussions with environmental groups and water utility providers on draft 1041 regulations. In response to these stakeholder discussions, staff suggests Council consider the following five decision points. Full staff analysis is provided under the attachments.

### **Decision Point 1 – Update Definitions**

Council Action during the May 2 Council meeting:

- No Change to the Code  
OR
- (Staff recommendation) Amend the Code to remove pipe-size diameter and exclude projects within existing public Right of Way
- (Staff recommendation) Amend the Code to add a definition that redefines the Applicability of Standards determination from a FONAI to a FONSI

### **Decision Point 2 – Update Application Procedures**

Council Action during the May 2 Council meeting:

- No change to the Code  
OR
- Adopt the Code and direct staff to bring forward an option for second reading amending the Code to do the following:
  - a) Staff recommendation add conceptual submittal document that summarizes the potential for a significant impact.
  - b) Staff recommendation Move neighborhood meeting requirements to after review of the applicability of standards (i.e., FONAI determination), and extend comment period during the pre-application activity review.
  - c) Remove requirements that conceptual design be drafted at thirty-percent completeness;
  - d) Optional Pre-Application Review by City Council; and
  - e) Allow a process that allows a “limited scope resubmittal” after a final denial decision.

### **Decision Point 3 – Update Review Standards to account for construction activities outside the jurisdiction.**

Council Action during the May 2 Council meeting:

- (Staff Recommendation) No change to the Code  
If Council is interested in exploring designating areas of statewide interest outside the jurisdiction and/or the Poudre River (other geographic limits) staff recommends a Work Session to analyze policy implications and establish parameters for a new work stream.  
OR
- Direct staff to bring forward options amending the Code to account for construction activities outside the jurisdiction.

### **Decision Point 4 - Consider Intergovernmental Agreement (IGA)**

Council Action during the May 2 Council meeting:

- (Staff recommendation) No Change to the Code  
OR
- Postpone code adoption, schedule a work session to explore scope.

## Decision Point 5 – Permit administration (See *City Financial Impacts*)

Council Action during the May 2 Council meeting:

- (Staff recommendation) Direct staff to bring back a supplemental appropriation for permit administration.

OR

- Postpone adoption of the Code.

## Costs for Third-Party Consultants

The proposed amendment to Land Use Code Section 2.2.3 to allow the City to retain the services of third-party consultants to assist in the review of development applications, including 1041 applications, has been removed from the Ordinance because the identical language was adopted as part of the oil and gas Land Use Code amendments adopted on second reading on April 4, 2023, Ordinance No. 151, 2022 (see Section 5 of Ordinance No. 151, 2022).

## CITY FINANCIAL IMPACTS

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### Decision Point 5 – Permit Administration

With the information available to staff through a recent Request for Information (RFI), a full permit review (only) is estimated to cost between \$20-30K per application reviewed. A Request for Proposal (RFP) will be issued shortly after the adoption of the Code for an on-call contractor servicing third party permit review of all phases of the 1041 permit. This would include conceptual, FONAI, and full permit review. All costs assessed by the contractor will pass through to the applicant and an additional staffing analysis is needed for ongoing management of the permitting program. The proposed program design will help staff get the program started soon after adoption with existing staff levels, and better prepare Community Development and Neighborhood Services for a future BFO offer. If Council adopts the ordinance on first reading, staff will prepare a supplemental appropriation for Council's consideration shortly after second reading of the Ordinance.

## BOARD / COMMISSION / COMMITTEE RECOMMENDATION

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Staff met with several City Boards and Commissions prior to the February 7 Council meeting; however, has not met with Boards and Commissions since February 7 given that no changes have been made to the Code. During the Planning and Zoning Commission hearing on January 25, the Commission unanimously adopted the recommendation below:

*The Planning and Zoning Commission recommend that City Council NOT ADOPT the proposed 1041 regulations until the public has sufficient time to review staff's Version 3 and to comment fully on its impact. The Planning and Zoning Commission believes the proposed regulation is directionally correct; however, additional input is needed by affected parties on at least the following areas:*

- *Potential consequences of the proposed regulation, as currently written*
- *The extent to which the regulation could legally extend to impacts created by components of the project outside the jurisdictions but that affect the natural resources and natural areas of Fort Collins*
- *Whether the scope of projects to be regulated is appropriate, relative to what would be considered material in the scope of such projects.*

*This recommendation could require that more time be allowed between first and second readings, or that the current moratorium be extended, if necessary. This decision is based upon the agenda materials, the information and materials presented during the work session and this hearing, and the Commission discussion on this item.*

**Re-engagement summary and stakeholder feedback since February 7, 2023:**

The 1041 regulations were released to the public on January 20, 2023, and incorporated changes based on public feedback themes discussed between November 2022 and January 2023. Following the November 2022 work session, public engagement tactics focused on working group meetings where policy issues were discussed but very few public comments regarding specific ordinance language were collected. Given the lack of access to actual code language ahead of the February 7, 2023 Council meeting, stakeholders expressed distrust in the process and requested more time to review. Based on the Planning and Zoning Commission's recommendation to allow more time for the public to deliberate, Council adopted a motion to extend the moratorium to June 30 and reschedule the first reading of 1041 regulations to May 2, 2023, and until stakeholders have an opportunity to understand the Code's full impact. Based on Council direction, staff prepared re-engagement questions, met with stakeholders, and consolidated feedback in a memo circulated to Council on April 14. Public comment and detailed transcripts from reengagement meetings with stakeholders is provided in the transcript.

As suggested by Council, staff reached out to Larimer County staff to seek feedback on implementation of their 1041 regulations and any lessons learned since its adoption. Larimer County staff have not provided comments since updated draft regulations were released in fall of 2022.

Date	Community Member Outreach Activities
4/17/2023	ELCO Water
4/7/2023	Ray Watts (environmental group member)
3/28/2023	Environmental Working Group
3/24/2023	Fort Collins-Loveland Water District (FCLWD)
3/20/2023	Boxelder Sanitation
3/17/2023	ELCO Water
3/15/2023	NWCWD
3/14/2023	Northern Water
3/10/2023	ELCO Water
3/10/2023	Fort Collins-Loveland Water District (FCLWD)
3/9/2023	Environmental Working Group
3/7/2023	Keith Meyer (Ditesco Services)
2/22/2023	Peggy Montano (Trout Law representing Northern Water)
2/7/2023	City Council Hearing
1/25/2023	Planning and Zoning Commission Hearing
1/19/2023	Disproportionately Impacted Communities - Open House
1/19/2023	Water Commission
1/13/2023	Planning and Zoning Commission work session
1/12/2023	Economic working group
1/11/2023	Fort Collins Utilities
1/11/2023	Water Provider Working Group
1/9/2023	Environmental Working Group
1/9/2023	Save the Poudre
1/6/2023	Boards and Commissions Working Group

1/5/2023	Fort Collins Sustainability Group
12/21/2022	Transportation Board
12/19/2022	Economic working group
12/16/2022	Natural Areas Department
12/15/2022	Natural Resources Advisory Board
12/14/2022	Northern Water
12/13/2022	Boards and Commissions Working Group
12/7/2022	CDOT
12/7/2022	Water Provider Working Group
12/6/2022	Environmental Working Group
12/5/2022	Boxelder Sanitation
11/17/2022	Water Commission
11/16/2022	Transportation Board
11/10/2022	Planning and Zoning Commission work session
11/9/2022	Land Conservation Stewardship Board
11/6/2022	City Council work session

## ATTACHMENTS

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1. Ordinance for Consideration
2. Decision Point 1
3. Decision Point 2
4. Decision Point 3
5. Decision Point 4
6. What Makes an Impact Significant?
7. Public Comments
8. Presentation